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CALIFORNIA LEGISLATURE—2001–02 SECOND EXTRAORDINARY SESSION

SENATE BILL

No. 78

Introduced by Senators Polanco and Sher

May 17, 2001

An act to add Chapter 5.6 (commencing with Section 25465) to Division 15 of the Public Resources Code), to amend Sections 341.5, 359, 367, 368, 369, 377, 379, 1731, and 9601 of, to add Sections 365.1, 365.2, 365.3, 367.2, 454.10, and 454.11 to, and to add Article 15.5 (commencing with ~~Section 399.10~~) and Article 16 (commencing with ~~Section 399.20~~) to Chapter 2.3 of Part 1 *Section 399.10*), Article 16 (commencing with *Section 399.20*), and Article 17 (commencing with *Section 399.30*) of Division 1 of, to repeal Section 361 of, to repeal Article 4 (commencing with Section 355) of Chapter 2.3 of Part 1 of Division 1 of, and to repeal and add Section 330 of, the Public Utilities Code, and to amend Sections 80002, 80010, and 80110 of the Water Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 78, as amended, Polanco. Electric Utility Rate Stabilization Act of 2001.

(1) Existing provisions of the Public Utilities Act restructuring the electrical industry establish a process for the recovery by electrical corporations regulated by the Public Utilities Commission of uneconomic transition costs for a certain period of time, and requires the commission to establish a mechanism for recovery of these costs.

This bill would also provide for recovery by a specified electrical corporation of qualified costs, as defined, subject to verification by the commission and the state auditor and approval by the commission, if the electrical corporation and its holding company enter into a specified binding and enforceable agreement with the state for performance of various requirements including, the sale to retail end-use customers of and the application of cost-based rates to all electricity produced by generation assets owned by the corporation, dedication of certain generation output to the state, *conveyance of certain lands to a trust*, application of revenues from electricity market stabilization bonds to repay specified debt, confirmation of specified payments relating to qualified facilities, restriction on paying a distribution to shareholders of cash, liquid assets, or property, termination of certain actual or potential litigation, agreement to resume procurement of full electricity requirements for its service area as soon as it is given at least an investment grade rating by one or more nationally recognized rating agencies or January 1, 2003, whichever is sooner, providing an irrevocable option to the state with specified requirements to purchase transmission facilities owned by the electrical corporation at *fair market value, not to exceed 2 times the net book value*, and agreement to administer any power procurement contract as the Department of Water Resources may request. The bill would also require the electrical corporation to agree in the agreement that a specified tax refund be applied to reduce or eliminate past debt of the electrical corporation.

The bill would require the commission, on or before January 1, 2002, to determine the allocation of electricity to be provided by the Department of Water Resources under its power procurement contracts to the customers of each electrical corporation. The bill would require each electrical corporation to file a procurement plan with the commission within a specified period after the commission determines that allocation of electricity. The bill would require the commission to review and adopt the procurement plan, as specified.

The bill would require the commission, until December 15, 2006, to approve an irrevocable financing order, as defined, for the recovery by the electrical corporation of an electrical corporation debt repayment



set-aside to repay electric market stabilization bonds, which bonds may not exceed qualified costs of \$2,500,000,000 for net undercollected costs and \$400,000,000 for interest on those uncollected costs. The bill would require the electrical corporation debt repayment set-aside established pursuant to these provisions to be paid exclusively by customers in the electrical corporation's service territory with a maximum peak demand exceeding 20 kilowatts, based on the usage of the prior year excluding specified standby service. The bill would enact various other related provisions in that regard, including authorizing the issuance of electricity market stabilization bonds by a financing entity, as defined, secured by the debt repayment set-aside, and requiring commission approval of those bonds. The bill would prohibit revenues derived from the issuance of electricity market stabilization bonds to be expended on debt or charges imposed on the electrical corporation by the independent Power Exchange, the Independent System Operator, or wholesale electricity suppliers for energy purchased on or before January 18, 2001. The bill would exempt specified customer load provided by customer generation, as defined, from having to pay for the qualified costs.

(2) Existing law requires the commission to identify certain generation-related costs of electrical corporations that are uneconomic under the restructuring of the electrical industry, and provides for recovery of those uneconomic costs by the electrical corporations from customers in a specified manner.

This bill would provide that these and certain related provisions shall not on or after January 1, 2002 be applicable to an electrical corporation that has entered into a specified agreement with the state.

(3) The Public Utilities Act provides for the continued regulation by the commission of the facilities for the generation of electricity owned by any public utility prior to January 1, 1997, but pursuant to Chapter 2 of the 2001–02 First Extraordinary Session, also prohibits any disposal of a facility of this nature prior to January 1, 2006.

This bill would enact new provisions authorizing the commission to require an electrical corporation to make direct investments in generation facilities, and providing for the commission to approve rates sufficient to support that investment. The bill would prohibit the commission, on or before January 1, 2006, from reducing a specified electrical corporation's authorized rate of return on equity below a certain level, if the electrical corporation has entered into the specified



binding and enforceable agreement with the state described above in (1).

(4) Existing law requires the Public Utilities Commission to authorize direct transactions between electricity suppliers and end-use customers.

This bill would permit a residential end-use customer to purchase electric power from an electric service provider if the power is 80% from a renewable energy source as approved by the State Energy Resources Conservation and Development Commission, and the residential user pays a fee to the Department of Water Resources equivalent to the department's net unavoidable cost of power procurement that is directly attributable to that customer.

The bill would also authorize, commencing January 1, 2003, a retail end-use customer to elect service from an electric service provider upon payment of a fee to the Department of Water Resources equivalent to the department's net unavoidable cost of power procurement that is directly attributable to that customer, and payment of an exit fee, except as specified, equivalent to the excess, if any, of the customer's proportionate share of total actual procurement costs, including financing costs and proportionate share of administrative costs associated with these provisions, incurred by the department during the period the customer purchased power from the department, over the revenues collected by the department from the customer during that period of time. The bill would authorize a retail end-use customer to elect to purchase power through a direct transaction during an open enrollment period without being subject to the fees described above. The bill would require the Public Utilities Commission to adopt regulations regarding the ability of direct transaction customers to become electrical corporation customers. The bill would exempt from having to pay exit fees certain retail end-use customers who were parties to direct transaction contracts commencing before specified dates. The bill would also provide for new customer generation, as specified.

(5) Existing law authorizes the Public Utilities Commission to establish rates for public utilities.

The bill would require the commission to establish the Ratepayer Benefit Account with separate subaccounts for the electrical corporation that has entered into the agreement described in paragraph (1). The bill would require that 50% of the first one billion dollars, and 100% of all additional dollars, recovered by the electrical corporation from any litigation or agreement relative to the charging, either directly

or indirectly, of excessive costs for power by electric power generators, suppliers, and marketers, and excessive costs for natural gas charged, either directly or indirectly, to natural gas suppliers or marketers prior to January 18, 2001, be credited to the account. The bill would require that any refunds, reimbursements, or other financial penalties ordered by the commission in a specified proceeding to be paid with respect to the electrical corporation to be credited to the Ratepayer Benefit Account. The bill would require that moneys credited to the Ratepayer Benefit Account subaccount be held in trust on behalf of the ratepayers.

(6) Provisions of the Public Utilities Act restructuring the electrical industry establish a process for the recovery by electrical corporations of uneconomic costs during a transition period that began on January 1, 1998, and ends for an electrical corporation on the earlier of March 31, 2002, or the date that the electrical corporation fully recovers its uneconomic costs. Existing law imposes a rate freeze and a rate reduction during the transition period to remain in effect until March 31, 2002, unless the electrical corporation fully recovers its uneconomic costs at an earlier date. The electrical corporation is at risk for those costs not recovered during that time period. Existing law requires the Public Utilities Commission to establish an effective mechanism that ensures the recovery of transition costs.

This bill would exempt from that assignment of the risk of unrecovered costs an electrical corporation that has entered into an agreement as described in (1) with the state. The bill would require the commission to establish an effective mechanism that ensures recovery of qualified costs, as defined, from customers, as specified, in the service territory in which the electrical corporation provided electric service as of January 15, 2001.

The bill would allow the commission, notwithstanding any other provision of law, to establish rates that enable the electrical corporation to recover, on a timely basis, consistent with the electrical corporation ~~having achieving and maintaining an investment-grade rating~~ *a rating for outstanding unsecured debt of at least one rating above the lowest investment grade rating by one or more nationally recognized rating agencies*, all reasonable costs of producing power and ancillary services from utility retained generation dedicated to the service of bundled service customers.

(7) The Public Utilities Act requires retail suppliers of electric services to disclose sources of electrical generation, as prescribed, and requires that those retail suppliers report specified information to the



State Energy Resources Conservation and Development Commission (Energy Commission).

This bill would create the California Renewables Portfolio Standards Program, which would establish a portfolio standard of electricity from eligible renewable energy resources, as defined, that a retail seller, as defined, would be required to purchase or generate.

(8) Existing law provides that a violation of the Public Utilities Act is a crime.

This bill, by enacting new requirements relative to an electrical corporation, would thereby impose a state-mandated local program.

(9) Existing law providing for the restructuring of the electrical industry provides for creation of a Power Exchange to provide an efficient competitive auction for power that meets the loads of all exchange customers at efficient prices.

This bill would repeal these provisions. The bill would make other changes to various electrical restructuring provisions and would add legislative findings in that regard.

(10) Existing law permits the Department of Water Resources through rates and charges to recover its electric procurement costs and to repay bonds, as specified.

This bill would make all rates, charges, and fees established by the Public Utilities Commission to recover the department's costs, as defined, nonbypassable, except as specified. The bill would make these rates, charges, and fees disconnectible to the same extent as rates, charges, and fees payable to an electrical corporation. The bill would require the commission for customer rates established by the commission after the effective date of this act, in allocating the department's financing costs, as defined, to customer rates for department power purchases, to allocate those costs at a uniform rate per kilowatthour of department-procured electricity consumed by all bundled service customers.

(11) This bill would enact other related provisions.

(12) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The wholesale electricity market in California is grossly dysfunctional, characterized by an abuse of seller market power that has resulted in unjust and unreasonable wholesale prices for electricity.

(b) As a result of the state's dysfunctional wholesale market, residential and business consumers have endured the largest single retail rate increase in the state's history, the state's largest electrical corporation is bankrupt, a second electrical corporation is on the verge of insolvency, and reliable electricity service has been jeopardized.

(c) Regulatory jurisdiction to ensure just and reasonable wholesale prices rests wholly with the Federal Energy Regulatory Commission (FERC).

(d) Although state policymakers, including state and federal legislative leaders, the Governor, and governors of other western states, have requested FERC to impose regional price caps to achieve just and reasonable wholesale prices, FERC has refused to do so.

(e) The current financial condition of the electrical corporations doing business in this state, and the unstable condition of the electric utility market in California is unsustainable.

(f) It is in the state's interest to have functional creditworthy utilities providing essential electricity service to California consumers at just and reasonable rates.

(g) The burden of restoring a utility's creditworthiness should not be borne by the state's ratepayers alone, but should be achieved through contributions from the utility's shareholders, creditors, and ratepayers.

(h) For making a substantial contribution toward making a utility a creditworthy entity, ratepayers should receive tangible benefits equivalent to the value of their contribution in making a utility creditworthy.

(i) It is the intent of the Legislature, through the enactment of the act adding this section, to do all of the following:

(1) Set the conditions under which an electrical corporation may become creditworthy and meet its obligations to serve consumers with reliable electricity service at just and reasonable rates.

(2) Provide guidance to electrical corporations and the Public Utilities Commission for the prospective procurement of electricity by an electrical corporation.

(3) Ensure that each electrical corporation whose customers are currently being served by the Department of Water Resources resumes responsibility for procurement needs that are not being met by the Department of Water Resources on January 1, 2003, or the date of restoration of its credit rating to investment grade.

(4) Direct the Public Utilities Commission to review each electrical corporation's procurement plan in a manner that assures creation of a diversified procurement portfolio, assures just and reasonable electricity rates, provides certainty to the electrical corporation in order to enhance its financial stability and creditworthiness, and eliminates the need, with specified exceptions, for after-the-fact reasonableness review of an electrical corporation's prospective electricity procurement performed consistent with an approved procurement plan.

SEC. 2. Chapter 5.6 (commencing with Section 25465) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 5.6. CALIFORNIA RENEWABLES PORTFOLIO STANDARDS
PROGRAM

25465. For purposes of this chapter, the following terms have the following meanings.

(a) "Eligible renewable energy resource" means an electric generating facility or solar thermal energy system that reduces the consumption of electricity through the use of renewable resources and that meets all of the following criteria:

(1) Uses wind, solar, geothermal, or biomass as its primary fuel.

(2) Improves the resource diversity in the electricity market that serves the state, and increases the reliability of the state's electricity system. The commission shall deem an electric generating facility or solar thermal energy system to satisfy this requirement if at least one of the following criteria are met:

(A) It is located within or interconnected to the control area of the California Independent System Operator, the Los Angeles Department of Water and Power, or the Imperial Irrigation District.

(B) Its power is sold under a direct bilateral contract to a retail seller and its energy is scheduled into the control area of the California Independent System Operator, the Los Angeles Department of Water and Power, or the Imperial Irrigation District.

(C) It meets other fact-based criteria established by the commission.

(b) “Eligible existing renewable energy resource” means an electric generating facility that satisfies all criteria in subdivision (a) and was in existence before January 1, 2001. Any facility that sells its output to an electrical corporation under a contract entered into prior to 1996 under the federal Public Utilities Regulatory Policies Act of 1978 (P.L. 95-617) shall be considered an eligible existing renewable energy resource.

(c) “Eligible new renewable energy resource” means output from an electric generating facility that satisfies all criteria in subdivision (a) and meets at least one of the following criteria:

(1) The facility commenced initial operation on or after January 1, 2001.

(2) The output represents incremental production from repowered or refurbished existing facilities and project additions completed on or after January 1, 2001, as measured by the production of kilowatthours above the five-year average of the kilowatthours delivered from the project during the five-year period ending December 31, 2000.

(3) The output represents incremental output above levels specified in contracts for facilities defined in subdivision (b).

(d) (1) For an electrical corporation, “renewable energy credit” means a tradable certificate of proof, certified by the commission, that one kilowatthour of electricity was generated by an eligible renewable energy resource.

(2) For a local publicly owned electric utility, “renewable energy credit” means a tradable certificate that one kilowatthour of electricity was generated by an eligible new renewable energy resource.

(e) “Biomass” means any of the following:

1 (1) Agricultural crops and agricultural wastes and residues.

2 (2) Landfill gas.

3 (3) Solid wood waste materials including waste pallets, crates,
4 dunnage, manufacturing and construction wood wastes (other than
5 pressure-treated, chemically treated or lead-painted wood wastes),
6 and landscape or right-of-way tree trimmings.

7 (4) Wood and wood wastes and residues that meet all of the
8 following requirements:

9 (A) Have been harvested pursuant to an approved timber
10 harvest plan prepared in accordance with the Z'berg-Nejedly
11 Forest Practice Act of 1973 (Chapter 8 (commencing with Section
12 4511) of Part 2 of Division 4.

13 (B) Have been harvested for purposes of forest fire fuel
14 reduction or forest-stand improvement.

15 (C) Do not transport or cause the transportation of species
16 known to harbor insect or disease pests outside zones of infestation
17 or current quarantine zones, as identified by the Department of
18 Food and Agriculture or the State Board of Forestry and Fire
19 Protection.

20 (f) (1) "Retail Seller" means an entity engaged in the retail
21 sale or provision of electricity to end-use customers, including, but
22 not limited to, either or both of the following:

23 (A) An electrical corporation, as defined in Section 218 of the
24 Public Utilities Code.

25 (B) An electric service provider as defined in Section 218.3 of
26 the Public Utilities Code.

27 (2) "Retail seller" does not include retail load served on site or
28 under an over-the-fence arrangement consistent with Section 218
29 of the Public Utilities Code, or a local publicly owned electrical
30 utility, as defined in subdivision (d) of Section 9604 of the Public
31 Utilities Code.

32 (g) "Portfolio standard" means the specified percentage of
33 electricity generated by eligible renewable energy resources that
34 a retail seller is required to purchase in any given year, as
35 established by the commission pursuant to Section 25465.5.

36 (h) "Public utility" means an electrical corporation subject to
37 regulation by the Public Utilities Commission under Section 216
38 of the Public Utilities Code.

25465.3. The commission, in consultation with the Public Utilities Commission, and the Independent System Operator or any successor entity, shall do all of the following:

(a) Certify eligible new and existing renewable energy resources that it determines meet the criteria described in subdivisions (a), (b), and (c) of Section 25465.

(b) Design and implement a system of tradable renewable energy credits to facilitate and verify compliance by retail sellers and to ensure that the renewable energy represented by those credits is counted only once for the purpose of meeting the portfolio standard of this or any other state or for verifying retail product claims in this or any other state. The commission may issue credits to the owners of eligible new renewable energy resources.

(c) Allocate and administer funds from the Renewable Resource Trust Fund to complement the provisions of this chapter, to support a diversity of renewable resources and technologies, and to promote emerging renewable technologies.

25465.5. (a) The commission shall establish a portfolio standard requiring all retail sellers to purchase or generate a minimum quantity of output from available eligible new renewable energy resources as a specified percentage of total kilowatthours sold to its retail end-use customers. The commission shall establish the minimum uniform percentage of eligible new renewable energy resources to be procured by retail sellers according to the following schedule, and to the extent there is sufficient renewable resource supply to meet these procurement targets:

(1) At least 1 percent by June 1, 2003.

(2) At least 2 percent by January 1, 2005.

(3) At least 5 percent by January 1, 2007.

(4) At least 8 percent by January 1, 2009.

(5) At least 10 percent beginning on January 1, 2010 and continuing until January 1, 2020.

(6) (A) The commission shall increase the percentage of retail sales required from eligible new renewable energy resources if an increase is necessary, in combination with the statewide contribution of eligible existing renewable energy resources, to produce the minimum percentages of total statewide retail sales

1 from all eligible renewable energy resources according to the
2 following schedule:

- 3 (i) 10 percent by June 1, 2003.
- 4 (ii) 12 percent by January 1, 2005.
- 5 (iii) 15 percent by January 1, 2007.
- 6 (iv) 18 percent by January 1, 2009.
- 7 (v) 20 percent by January 1, 2010.

8 (B) The commission shall notify all retail sellers at least one
9 year prior to increasing the requirement for procuring eligible new
10 renewable resources.

11 (b) Notwithstanding any other requirement of this section, the
12 commission shall establish a mechanism to ensure that compliance
13 with the portfolio standard will not result in incremental
14 procurement costs for retail sellers that exceed one and one half
15 cents (\$0.015) per kilowatthour of eligible renewable energy
16 resource generation in 2001 dollars. The calculation of
17 incremental procurement costs shall be determined by the price of
18 renewable energy credits established pursuant to subdivision (b)
19 of Section 25465.3.

20 (c) Each electrical corporation shall include plans to meet its
21 obligations pursuant to this section as part of a procurement plan
22 submitted to the Public Utilities Commission, and the Public
23 Utilities Commission shall authorize each electrical corporation to
24 fully recover in rates all reasonable costs of implementing and
25 administering the California Renewables Portfolio Standard
26 authorized pursuant to this section.

27 25465.7. The commission shall commence proceedings for
28 implementing the California Renewables Portfolio Standard on or
29 before 90 days after the effective date of this section. The
30 commission shall adopt final implementing regulations on or
31 before June 1, 2002.

32 25465.9. The Department of Water Resources shall make all
33 efforts it determines to be reasonable to comply with this chapter.

34 SEC. 2.5. Section 330 of the Public Utilities Code is repealed.

35 SEC. 3. Section 330 is added to the Public Utilities Code, to
36 read:

37 330. (a) The Legislature finds and declares all of the
38 following:

39 (1) The delivery of electricity over transmission and
40 distribution systems is currently regulated, and will continue to be

regulated to ensure system safety, reliability, environmental protection, and fair access for all market participants.

(2) Reliable electric service is of utmost importance to the safety, health, and welfare of the state's citizenry and economy. It is the intent of the Legislature that electric industry restructuring should enhance the reliability of the interconnected regional transmission systems, and provide strong coordination and enforceable protocols for all users of the power grid.

(3) It is important that sufficient supplies of electric generation will be available to maintain the reliable service to the citizens and businesses of the state.

(4) Reliable electric service depends on conscientious inspection and maintenance of transmission and distribution systems.

(5) The people of California expect the utilities and the government of the state to assure safe and reliable electric service at a just and reasonable price.

(6) The decision of the ~~California Public Utilities Commission~~ *commission* in Decision 95-12-063, modified by Decision 96-01-009, to diminish the obligation of regulated electric utilities to serve their California customers with electric energy has severely impacted the delivery of safe and reliable electric service at a just and reasonable price.

(7) As the direct result of that policy, utilities divested themselves of facilities essential to their ability to meet their obligation to serve, including sales of electric generation facilities to third parties, and transfer of operational control of transmission facilities to the Independent System Operator (ISO), an entity subject to dual control by state and federal authorities.

(8) As the direct result of that policy, utilities have been unable to fully serve their customers with electric energy, and have been required to acquire electric energy through purchases in wholesale markets.

(9) As the direct result of that policy, utilities and California authorities have been unable to maintain electric service stability or reliability.

(10) Wholesale electricity markets have been characterized by the existence of seller market power, and will continue to be characterized in the future by seller market power, until state and

1 federal authorities act cooperatively to eliminate that market
2 power.

3 (11) The scope and scale of seller market power have increased
4 with the utility divestiture of powerplants and transfer of
5 operational control of the transmission system to the ISO, as has
6 the cost to utilities and their retail customers.

7 (12) Prices for electric energy sold for resale, which are under
8 the jurisdiction of the federal government, have not been just and
9 reasonable since May 1, 2000, due to the existence and exercise of
10 seller market power.

11 (13) Between May 1, 2000, and May 1, 2001, California
12 utilities and their retail customers have paid at least \$8.9 billion in
13 excess cost due to seller market power.

14 (14) The wholesale electricity market institutions created by
15 the commission in Decision 95-12-063, and envisioned by
16 Assembly Bill 1890 (Ch. 854, Stats. 1996) have collapsed, with the
17 result that there is no transparent day ahead or hour ahead market
18 and no pricing transparency in wholesale markets at the present
19 time or for the foreseeable future. Specifically:

20 (A) The Power Exchange as envisioned by Assembly Bill 1890
21 is defunct.

22 (B) The utilities as load serving entities are unable to
23 participate in the wholesale markets because sellers do not
24 consider them creditworthy.

25 (C) The state, through the Department of Water Resources
26 (DWR), has been forced to purchase electric energy in place of the
27 utilities, in a manner characterized by extreme secrecy intended to
28 reduce collusion and fraud by wholesale sellers.

29 (D) The ISO has become a significant buyer of last resort
30 through out-of-market purchases for energy when the utilities and
31 the DWR refuse to pay excessive prices, or when sellers withhold
32 energy from forward markets through failures to bid.

33 (15) The existence of seller market power in the California
34 wholesale electric markets affecting California has been formally
35 found and determined by the Federal Energy Regulatory
36 Commission (FERC).

37 (16) Federal authorities have been unwilling to take effective
38 action to relieve wholesale prices or mitigate seller market power,
39 contrary to their legal obligation.

(17) In order to restore the credit and operational capability of the utilities and to enable the DWR to make purchases at market-power driven prices, the commission has increased retail electric rates by an annual amount of over \$7 billion since January 4, 2001, so that electric rates in California are among the highest in the nation.

(18) Since January 2001, California has been beset by actual and threatened blackouts due to supply withholding by wholesale sellers, who use both direct and indirect means to make electric energy unavailable.

(19) The reduction in reliability is directly related to the faulty, now partially collapsed market structure and institutions created by commission Decision 95-12-063, and as codified by Assembly Bill 1890.

(20) The state has a duty to its people to assure the reliability of the electricity supply system, which has been undermined by the orders of the commission in Decision 95-12-063.

(21) The expectations and assumptions that the policy changes embodied in Assembly Bill 1890 would result in consumer benefits, enhanced reliability, lower rates, and technological innovation have proven illusory.

(22) Many owners of powerplants located within the California ISO control area are not required to consider the local need for power before purporting to schedule their supplies for export to other control areas. Most generators in other control areas throughout the western interconnection are controlled by vertically-integrated utilities with an obligation to assure adequate service to the customers within their respective service territories.

(23) It is essential to the public health, safety, and welfare of the people of the state that the ISO have control over the unit commitment and dispatch of powerplants located within the ISO control area in order to assure the provision of reliable service to the customers located therein.

(24) Fully empowering state entities, including the commission, the utilities, the ISO, and the DWR, to overcome seller market power, reduce prices for electric energy, and restore grid reliability is in the public interest.

(b) The purpose of this chapter is to return electrical corporations to creditworthiness sufficient to enable them to invest

1 in generation and procure energy at reasonable and competitive
2 costs. The Legislature finds this purpose is in the public interest.

3 SEC. 4. Section 341.5 of the Public Utilities Code is amended
4 to read:

5 341.5. (a) The Independent System Operator bylaws shall
6 contain provisions that identify those matters specified in
7 subdivision (b) of Section 339 as matters within state jurisdiction.
8 The bylaws shall also contain provisions which state that
9 California's bylaws approval function with respect to the matters
10 specified in subdivision (b) of Section 339 shall not preclude the
11 Federal Energy Regulatory Commission from taking any action
12 properly within its jurisdiction necessary to address undue
13 discrimination or other violations of the Federal Power Act (16
14 ~~U.S.C.A.~~ *U.S.C. Sec. 791a et seq.*) or to exercise any other
15 commission responsibility under the Federal Power Act.

16 (b) Any necessary bylaw changes to implement the provisions
17 of Sections 335, 337, 338, 339, or subdivision (a) of this section,
18 or changes required pursuant to an agreement as contemplated by
19 subdivision (a) of this section with a participating state for a
20 regional organization, shall be effective upon approval of the
21 respective governing boards and the Oversight Board and
22 acceptance for filing by the Federal Energy Regulatory
23 Commission.

24 SEC. 5. Article 4 (commencing with Section 355) of Chapter
25 2.3 of Part 1 of Division 1 of the Public Utilities Code is repealed.

26 SEC. 6. Section 359 of the Public Utilities Code is amended
27 to read:

28 359. (a) It is the intent of the Legislature to improve
29 reliability, to support mutual assistance among load serving
30 entities, to achieve equitable pricing policies in the western states,
31 and to improve the access of consumers served by the Independent
32 System Operator to functional and transparent markets.

33 (b) The preferred means by which the objectives described in
34 subdivision (a) should be realized is through the adoption of a
35 regional compact or other comparable agreement among
36 cooperating party states.

37 (c) The agreement described in subdivision (b) should provide
38 for all of the following:

(1) An equitable process for the appointment or confirmation by party states of members of the governing board of the regional organization.

(2) Mechanisms by which each party state, jointly or separately, can oversee effectively the actions of the Independent System Operator as those actions relate to the assurance of electricity system reliability within the party state and to matters that affect electricity sales to the retail customers of the party state or otherwise affect the general welfare of the electricity consumers and the general public of the party state.

(3) The adherence by publicly owned and investor-owned utilities located in party states to enforceable standards and protocols to protect the reliability of the interconnected regional transmission and distribution systems.

SEC. 7. Section 361 of the Public Utilities Code is repealed.

SEC. 7.5. Section 365.1 is added to the Public Utilities Code, to read:

365.1. The actions of the commission pursuant to this chapter shall be consistent with the findings and declarations contained in Section 330.

SEC. 8. Section 365.2 is added to the Public Utilities Code, to read:

365.2. (a) Notwithstanding any other provision of law, the right of retail end-use customers to enter into new contracts for direct transactions shall be suspended as of August 25, 2001, and the commission may not authorize any new or replacement direct transactions for retail end-use customers until January 1, 2003, and then only pursuant to this section.

(b) Commencing January 1, 2003, any retail end-use customer purchasing power from an electrical corporation may elect to purchase power from an electric service provider upon payment of the fee described in subdivision (c) and, unless the exception described in subdivision (d) applies, the fee described in subdivision (d).

(c) Any retail end-use customer electing to purchase power from an electric service provider pursuant to subdivision (b) shall pay an exit fee equal to the excess, if any, of the customer's proportionate share of total actual procurement costs, including financing costs and proportionate share of administrative costs associated with this section, incurred by the Department of Water

Resources during the period during which the customer purchased power from the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code, over the revenues collected by the Department of Water Resources from the customer during that period, as determined by the Department of Water Resources.

(d) (1) In addition to paying the fee described in subdivision (c), a retail end-use customer electing to purchase power from an electric service provider pursuant to subdivision (b) shall also pay an additional exit fee equal to the customer's proportionate share of the Department of Water Resource's estimated net unavoidable cost of power procurement for the period commencing immediately after the commencement of purchases from an alternate provider through the expiration of all then existing contracts for power entered into by the Department of Water Resources, as the proportionate share and unavoidable cost are determined by the Department of Water Resources, unless the exception in paragraph (2) applies.

(2) A retail end-use customer electing to purchase power from an electric service provider may not be required to pay the fee described in this subdivision to the extent that, as of the customer's commencement of purchase from an alternate provider, the total load, measured in aggregate annual megawatt hours, *taking account of load profile, peak, and seasonal power requirements*, available for direct transactions within the service territory of the electrical corporation, as determined by the commission, is less than the difference between the total load within the service territory of the electrical corporation and the sum of the electrical corporation's retained generation as of August 24, 2001, and the minimum delivery obligations under then existing power purchase contracts of that electrical corporation as of August 24, 2001, and power purchase contracts, not including renewals effectuated at the discretion of the Department of Water Resources, procured by the Department of Water Resources to serve customers within that electrical corporation's service territory as of August 24, 2001.

(e) (1) The department shall submit information on its long term power purchase contracts to the commission in a time frame that allows the commission to meet its obligations under this subdivision. Within 90 days after the effective date, and every 6 months thereafter, the commission shall determine and publish the

load available for direct transactions, which is not subject to subdivision (d).

(2) Within 30 days after the date of publishing the load available for direct transactions, the commission shall establish an open enrollment period. Any customer electing to take service through direct transactions shall submit a notice to switch to the electrical corporation within 90 days after the date that the available load was published.

(f) Nothing in this section relieves customers of the nonbypassable charges for qualified costs provided for in Section 369.

(g) The commission shall adopt regulations regarding the ability of direct transaction customers to become electrical corporation customers. The regulations may include a requirement that direct transaction customers give reasonable notice to the electrical corporation before the electrical corporation is required to provide service to those customers.

(h) (1) A retail end-use customer that was a party to a direct transaction contract with a term commencing on or before May 1, 2000, and extending through August 24, 2001, or later, may not be subject to any charge associated with any power purchase or financing costs incurred by the Department of Water Resources or its successor.

(2) A retail end-use customer that took continuous service under a direct transaction contract for the period commencing on or before May 1, 2000, and extending through January 17, 2001, or later, may not be subject to any charge associated with qualified costs pursuant to subdivision (f) of Section 399.20. Such a charge may not be assessed against facilities operated by the University of California or California State University.

~~(3) A retail end-use customer that was a party to a contract for a direct transaction with a term commencing on or after January 17, 2001, through August 24, 2001, shall not be subject to any charge associated with power purchase costs incurred by the Department of Water Resources or its successor, for energy deliveries following the date on which the load begins to receive service under the direct transaction, provided that the commission finds that the execution of a direct transaction during the period specified in this paragraph shall not result in additional stranded costs.~~

(3) A retail end-use customer that was a party to a contract for a direct transaction with a term commencing on or after January 17, 2001, through August 24, 2001, shall be required to pay the fee described in subdivision (c). The customer may not be required to pay the fee described in subdivision (d) following the date on which the customer's load begins to receive service under the direct transaction if the commission finds that the execution of a direct transaction during the period specified in this paragraph will not result in additional stranded costs.

(i) Notwithstanding subdivision (a), or any other provision of law, a residential end-use customer may at any time elect to purchase electricity from an electric service provider if the electrical energy is at least 80 percent from renewable energy sources as determined by the State Energy Conservation and Development Commission. A residential end-use customer that elects to purchase electrical power pursuant to this subdivision shall pay the fee required under subdivision (c).

(j) This section is not applicable to a facility, located on the site of, or immediately adjacent to, an electric generating plant that is not owned by an electrical corporation, and that meets all of the following criteria:

(1) Shares common operating facilities with the electric generating plant.

(2) Has never been served by an electrical corporation.

(3) Does not require the use of transmission or distribution facilities owned by an electrical corporation.

(k) The provisions of the act adding this section, including this section, are not applicable to obtaining power under Section 701.8, except for power obtained under paragraph (3) of subdivision (f) of Section 701.8.

(l) "Effective date," for purposes of this section, means the effective date of the act adding this section in the 2001–02 Second Extraordinary Session.

SEC. 8.5. Section 365.3 is added to the Public Utilities Code, to read:

365.3. (a) For purposes of this section, "customer generation" means a generating facility that meets both of the criteria set forth in paragraphs (1) and (2), or the criterion set forth in paragraph (3):

(1) The facility supplies the retail electricity user with electric energy using private transmission lines or utility transmission lines paid for and dedicated to the retail electricity user.

(2) The retail electricity user or its affiliate, pursuant to paragraph (1) of subdivision (a) of Section 372, holds an ownership interest in the generating facility or related property of the lesser of 50 percent or an interest commensurate with the user's proportionate consumption of the output of the facility.

(3) The customer load is served by generation consistent with subdivision (b) of Section 218.

(b) Customer load that has been served by customer generation commencing on or before May 1, 2000, through August 24, 2001, is not subject to any charge associated with qualified costs as defined in subdivision (f) of Section 399.20 or any power purchase or financing costs incurred by the Department of Water Resources or its successor, *if the customer load has not purchased power from the electrical corporation for more than 336 hours during the period specified in this subdivision due to a customer generation outage. If the customer load purchased power from the electrical corporation for more than 336 hours during the period specified in this subdivision, the customer shall pay a proportionate share of qualified costs pursuant to Section 399.20 for power purchases from May 1, 2000, to January 17, 2001, and a proportionate share of the costs incurred by the Department of Water Resources for power purchases from January 17, 2001, to August 24, 2001.* Customer load that is served by customer generation for which an application for authority to construct has been submitted to the lead agency under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), not later than August 24, 2001, ~~shall not be~~ *is not* subject to any charge associated with power purchase costs incurred by the Department of Water Resources or its successor for energy deliveries following the date on which the load begins to receive service from the customer generation.

(c) Customer load that is served by customer generation installed on or after August 24, 2001, except as otherwise specified in subdivision (b), is not subject to any charge associated with power purchase costs incurred by the Department of Water Resources or its successor for energy deliveries following the date on which the load begins to receive service from the customer

1 generation, provided that the application of this provision shall be
2 limited to the load amounts specified in subdivision (d). Eligibility
3 under this subdivision shall be determined by procedures
4 established by the State Energy Resources Development and
5 Conservation Commission, based upon a first-come, first-served
6 methodology, the load and resources in each electrical
7 corporation's service territory, the fuel efficiency of the
8 generation, and other pertinent criteria, *as determined by the State*
9 *Energy Resources Development and Conservation Commission.*

10 (d) The application of subdivision (c) shall be limited
11 commencing January 1, 2002, to 250 megawatts of load statewide,
12 and the limit shall increase by 250 megawatts statewide on each
13 January 1 thereafter. If the commission determines that the total
14 statewide load will exceed the sum of the electrical corporations'
15 retained generation, as of August 24, 2001, and the minimum
16 delivery obligations under power purchase contracts of the
17 electrical corporations as of August 24, 2001, and the power
18 purchase contracts, not including renewals effectuated at the
19 discretion of the Department of Water Resources, procured by the
20 Department of Water Resources to serve customers within the
21 electrical corporations' service territories as of August 24, 2001,
22 the commission shall increase the then current limit for customer
23 generation pursuant to this subdivision by not less than 30 percent
24 of the excess amount. The amount of any increase in customer
25 generation resulting from the excess amount may not be used for
26 direct access transactions or for calculating total load for direct
27 transactions, under Section 365.2.

28 ~~(e) This section is not applicable to a facility, located on the site~~
29 ~~of or immediately adjacent to an electric generating plant that is~~
30 ~~not owned by an electrical corporation, and that meets all of the~~
31 ~~following criteria:~~

32 ~~(1) Shares common operating facilities with the electric~~
33 ~~generating plant.~~

34 ~~(2) Has never been served by an electrical corporation.~~

35 ~~(3) Does not require the use of transmission or distribution~~
36 ~~facilities owned by an electrical corporation.~~

37 SEC. 9. Section 367 of the Public Utilities Code is amended
38 to read:

39 367. The commission shall identify and determine those costs
40 and categories of costs for generation-related assets and

1 obligations, consisting of generation facilities, generation-related
2 regulatory assets, nuclear settlements, and power purchase
3 contracts, including, but not limited to, restructurings,
4 renegotiations, or terminations thereof approved by the
5 commission, that were being collected in commission-approved
6 rates on December 20, 1995, and that may become uneconomic as
7 a result of a competitive generation market, in that these costs may
8 not be recoverable in market prices in a competitive market, and
9 appropriate costs incurred after December 20, 1995, for capital
10 additions to generating facilities existing as of December 20, 1995,
11 that the commission determines are reasonable and should be
12 recovered, provided that these additions are necessary to maintain
13 the facilities through December 31, 2001. These uneconomic costs
14 shall include transition costs as defined in subdivision (f) of
15 Section 840, and shall be recovered from all customers or in the
16 case of fixed transition amounts, from the customers specified in
17 subdivision (a) of Section 841, on a nonbypassable basis and shall:

18 (a) Be amortized over a reasonable time period, including
19 collection on an accelerated basis, consistent with not increasing
20 rates for any rate schedule, contract, or tariff option above the
21 levels in effect on June 10, 1996; provided that, the recovery shall
22 not extend beyond December 31, 2001, except as follows:

23 (1) Costs associated with employee-related transition costs as
24 set forth in subdivision (b) of Section 375 shall continue until fully
25 collected; provided, however, that the cost collection shall not
26 extend beyond December 31, 2006.

27 (2) Power purchase contract obligations shall continue for the
28 duration of the contract. Costs associated with any buy-out,
29 buy-down, or renegotiation of the contracts shall continue to be
30 collected for the duration of any agreement governing the buy-out,
31 buy-down, or renegotiated contract; provided, however, no power
32 purchase contract shall be extended as a result of the buy-out,
33 buy-down, or renegotiation.

34 (3) Costs associated with contracts approved by the
35 commission to settle issues associated with the Biennial Resource
36 Plan Update may be collected through March 31, 2002; provided
37 that only 80 percent of the balance of the costs remaining after
38 December 31, 2001, shall be eligible for recovery.

39 (4) Nuclear incremental cost incentive plans for the San Onofre
40 nuclear generating station shall continue for the full term as

1 authorized by the commission in Decision 96-01-011 and Decision
2 96-04-059; provided that the recovery shall not extend beyond
3 December 31, 2003.

4 (5) Costs associated with the exemptions provided in
5 subdivision (a) of Section 374 may be collected through March 31,
6 2002, provided that only fifty million dollars (\$50,000,000) of the
7 balance of the costs remaining after December 31, 2001, shall be
8 eligible for recovery.

9 (6) Fixed transition amounts, as defined in subdivision (d) of
10 Section 840, may be recovered from the customers specified in
11 subdivision (a) of Section 841 until all rate reduction bonds
12 associated with the fixed transition amounts have been paid in full
13 by the financing entity.

14 (b) Be limited in the case of utility-owned fossil generation to
15 the uneconomic portion of the net book value of the fossil capital
16 investment existing as of January 1, 1998, and appropriate costs
17 incurred after December 20, 1995, for capital additions to
18 generating facilities existing as of December 20, 1995, that the
19 commission determines are reasonable and should be recovered,
20 provided that the additions are necessary to maintain the facilities
21 through December 31, 2001. All “going forward costs” of fossil
22 plant operation, including operation and maintenance,
23 administrative and general, fuel and fuel transportation costs, on
24 or before December 31, 2000, shall be recovered solely from
25 independent Power Exchange revenues or from contracts with the
26 Independent System Operator, provided that for the purposes of
27 this chapter, the following costs may be recoverable pursuant to
28 this section:

29 (1) Commission-approved operating costs for particular
30 utility-owned fossil powerplants or units, at particular times when
31 reactive power/voltage support is not yet procurable at
32 market-based rates in locations where it is deemed needed for the
33 reactive power/voltage support by the Independent System
34 Operator, provided that the units are otherwise authorized to
35 recover market-based rates and provided further that for an
36 electrical corporation that is also a gas corporation and that serves
37 at least four million customers as of December 20, 1995, the
38 commission shall allow the electrical corporation to retain any
39 earnings from operations of the reactive power/voltage support
40 plants or units and ~~shall~~ may not require the utility to apply any

portions to offset recovery of transition costs. Cost recovery under the cost recovery mechanism shall end on December 31, 2001.

(2) An electrical corporation that, as of December 20, 1995, served at least four million customers, and that was also a gas corporation that served less than four thousand customers, may recover, pursuant to this section, 100 percent of the uneconomic portion of the fixed costs paid under fuel and fuel transportation contracts that were executed prior to December 20, 1995, and were subsequently determined to be reasonable by the commission, or 100 percent of the buy-down or buy-out costs associated with the contracts to the extent the costs are determined to be reasonable by the commission.

(c) Be adjusted throughout the period through March 31, 2002, to track accrual and recovery of costs provided for in this subdivision. Recovery of costs prior to December 31, 2001, shall include a return as provided for in *commission* Decision 95-12-063, as modified by Decision 96-01-009, together with associated taxes.

(d) (1) Be allocated among the various classes of customers, rate schedules, and tariff options to ensure that costs are recovered from these classes, rate schedules, contract rates, and tariff options, including self-generation deferral, interruptible, and standby rate options in substantially the same proportion as similar costs are recovered as of June 10, 1996, through the regulated retail rates of the relevant electric utility, provided that there shall be a firewall segregating the recovery of the costs of competition transition charge exemptions such that the costs of competition transition charge exemptions granted to members of the combined class of residential and small commercial customers shall be recovered only from these customers, and the costs of competition transition charge exemptions granted to members of the combined class of customers, other than residential and small commercial customers, shall be recovered only from these customers.

(2) Individual customers ~~shall~~ *may* not experience rate increases as a result of the allocation of transition costs. However, customers who elect to purchase energy from suppliers other than the Power Exchange through a direct transaction, may incur increases in the total price they pay for electricity to the extent the price for the energy exceeds the Power Exchange price.

(3) The commission shall retain existing cost allocation authority, provided the firewall and rate freeze principles are not violated.

(e) On and after January 1, 2002, this section ~~shall not be~~ *is not* applicable to an electrical corporation that has entered into an agreement with the state under subdivision (b) of Section 399.21, except that references in Sections 368, 369, 370, 371, 372, 373, and 374 to the costs described in this section shall continue to refer to those costs.

SEC. 9.2. Section 367.2 is added to the Public Utilities Code, to read:

367.2. (a) The commission shall establish a Ratepayer Benefit Account with a separate subaccount for each electrical corporation that has entered into an agreement pursuant to subdivision (b) of Section 399.21. The following funds shall be credited to the electrical corporation's subaccount:

(1) Fifty percent of the first billion dollars, and one hundred percent of all additional dollars resulting from any litigation or agreement relative to the charging, either directly or indirectly, of excessive costs for power by electric power generators, suppliers, and marketers and excessive costs for natural gas charged either directly or indirectly by natural gas suppliers or marketers, prior to January 18, 2001.

(2) Any refunds, reimbursements, or other financial penalties ordered by the commission to be paid with respect to the electrical corporation in commission proceeding I. 01-04-022.

(b) The commission shall from time to time in proportion to the class percentage rate increases adopted in the commission's Decision Number 01-05-064 for the ratepayers of an electrical corporation, refund to each ratepayer in a class based on consumption of power, moneys in the electrical corporation's Ratepayer Benefit Account subaccount through an immediate bill credit or, in the alternative, a reduction in rates in the same proportionate manner.

(c) All funds held by an electrical corporation that are required by this section to be credited to the Ratepayer's Benefit Account subaccount of the corporation are property of the ratepayers of that electrical corporation and are held in trust on their behalf.

SEC. 9.4. Section 368 of the Public Utilities Code is amended to read:

368. Each electrical corporation shall propose a cost recovery plan to the commission for the recovery of the uneconomic costs of an electrical corporation's generation-related assets and obligations identified in Section 367. The commission shall authorize the electrical corporation to recover the costs pursuant to the plan if the plan meets the following criteria:

(a) The cost recovery plan shall set rates for each customer class, rate schedule, contract, or tariff option, at levels equal to the level as shown on electric rate schedules as of June 10, 1996, provided that rates for residential and small commercial customers shall be reduced so that these customers shall receive rate reductions of no less than 10 percent for 1998 continuing through 2002. These rate levels for each customer class, rate schedule, contract, or tariff option shall remain in effect until the earlier of March 31, 2002, or the date on which the commission-authorized costs for utility generation-related assets and obligations have been fully recovered. Unless the electrical corporation has entered into a binding and enforceable agreement pursuant to subdivision (b) of Section 399.21, the electrical corporation shall be at risk for those costs not recovered during that time period. Each utility shall amortize its total uneconomic costs, to the extent possible, such that for each year during the transition period its recorded rate of return on the remaining uneconomic assets does not exceed its authorized rate of return for those assets. For purposes of determining the extent to which the costs have been recovered, any over-collections recorded in Energy Costs Adjustment Clause and Electric Revenue Adjustment Mechanism balancing accounts, as of December 31, 1996, shall be credited to the recovery of the costs.

(b) The cost recovery plan shall provide for identification and separation of individual rate components such as charges for energy, transmission, distribution, public benefit programs, and recovery of uneconomic costs. The separation of rate components required by this subdivision shall be used to ensure that customers of the electrical corporation who become eligible to purchase electricity from suppliers other than the electrical corporation pay the same unbundled component charges, other than energy, that a bundled service customer pays. No cost shifting among customer classes, rate schedules, contract, or tariff options shall result from the separation required by this subdivision. Nothing in this

1 provision is intended to affect the rates, terms, and conditions or
2 to limit the use of any Federal Energy Regulatory
3 Commission-approved contract entered into by the electrical
4 corporation prior to the effective date of this provision.

5 (c) In consideration of the risk that the uneconomic costs
6 identified in Section 367 may not be recoverable within the period
7 identified in subdivision (a) of Section 367, an electrical
8 corporation that, as of December 20, 1995, served more than four
9 million customers, and was also a gas corporation that served less
10 than four thousand customers, shall have the flexibility to employ
11 risk management tools, such as forward hedges, to manage the
12 market price volatility associated with unexpected fluctuations in
13 natural gas prices, and the out-of-pocket costs of acquiring the risk
14 management tools shall be considered reasonable and collectible
15 within the transition freeze period. This subdivision applies only
16 to the transaction costs associated with the risk management tools
17 and shall not include any losses from changes in market prices.

18 (d) In order to ensure implementation of the cost recovery plan,
19 the limitation on the maximum amount of cost recovery for
20 nuclear facilities that may be collected in any year adopted by the
21 commission in Decision 96-01-011 and Decision 96-04-059 shall
22 be eliminated to allow the maximum opportunity to collect the
23 nuclear costs within the transition cap period.

24 (e) As to an electrical corporation that is also a gas corporation
25 serving more than four million California customers, *for* so long
26 as any cost recovery plan adopted in accordance with this section
27 satisfies subdivision (a), it shall also provide for annual increases
28 in base revenues, effective January 1, 1997, and January 1, 1998,
29 equal to the inflation rate for the prior year plus two percentage
30 points, as measured by the consumer price index. The increase
31 shall do both of the following:

32 (1) Remain in effect pending the next general rate case review,
33 which shall be filed not later than December 31, 1997, for rates that
34 would become effective in January 1999. For purposes of any
35 commission-approved performance-based ratemaking
36 mechanism or general rate case review, the increases in base
37 revenue authorized by this subdivision ~~shall create no~~ *may not be*
38 *construed to create a* presumption that the level of base revenue
39 reflecting those increases constitute the appropriate starting point
40 for subsequent revenues.

(2) Be used by the utility for the purposes of enhancing its transmission and distribution system safety and reliability, including, but not limited to, vegetation management and emergency response. To the extent the revenues are not expended for system safety and reliability, they shall be credited against subsequent safety and reliability base revenue requirements. Any excess revenues carried over ~~shall~~ *may* not be used to pay any monetary sanctions imposed by the commission.

(f) The cost recovery plan shall provide the electrical corporation with the flexibility to manage the renegotiation, buy-out, or buy-down of the electrical corporation's power purchase obligations, consistent with review by the commission to assure that the terms provide net benefits to ratepayers and are otherwise reasonable in protecting the interests of both ratepayers and shareholders.

(g) An example of a plan authorized by this section is the document entitled "Restructuring Rate Settlement" transmitted to the commission by Pacific Gas and Electric Company on June 12, 1996.

SEC. 9.6. Section 369 of the Public Utilities Code is amended to read:

369. (a) (1) The commission shall establish an effective mechanism that ensures recovery of transition costs referred to in Sections 367, 368, 375, and 376, and subject to the conditions in Sections 371 to 374, inclusive, from all existing and future consumers in the service territory in which the utility provided electricity services as of December 20, 1995; provided, that the costs shall not be recoverable from new customer load or incremental load of an existing customer where the load is being met through a direct transaction and the transaction does not otherwise require the use of transmission or distribution facilities owned by the utility. However, the obligation to pay the competition transition charges ~~cannot~~ *may not* be avoided by the formation of a local publicly owned electrical corporation on or after December 20, 1995, or by annexation of any portion of an electrical corporation's service area by an existing local publicly owned electric utility.

(2) This subdivision does not apply to service taken under tariffs, contracts, or rate schedules that are on file, accepted, or approved by the Federal Energy Regulatory Commission, unless

1 otherwise authorized by the Federal Energy Regulatory
2 Commission.

3 (b) (1) The commission also shall establish an effective
4 mechanism that ensures recovery from all existing and future
5 consumers in the service territory in which the utility provided
6 electricity services as of January 15, 2001 of qualified costs
7 described in Section 399.20, subject to Section 399.25, provided
8 that the costs may not be recoverable from either of the following:

9 (A) (i) New customer load being met through a direct
10 transaction or (ii) incremental load of an existing customer being
11 met through a direct transaction where the customer's load as of
12 January 15, 2001 was greater than or equal to 20 kilowatts, in each
13 case where the direct transaction does not otherwise require the use
14 of transmission and distribution facilities owned by the utility.

15 (B) New customer load, or incremental load of an existing
16 customer, being met by new or expanded gas fired or renewable
17 customer generation facilities that serve retail load.

18 (2) The commission shall develop regulations to verify that
19 customers asserting exemptions under subparagraphs (A) and (B)
20 of paragraph (1) legitimately qualify as new or incremental
21 customer loads.

22 (3) The obligation to pay the electrical corporation debt
23 repayment set-aside may not be avoided by the formation of a local
24 publicly owned electrical corporation on or after January 15, 2001,
25 or by annexation of any portion of an electrical corporation's
26 service area by an existing local publicly owned electric utility, as
27 defined in subdivision (d) of Section 9604.

28 SEC. 9.8. Section 377 of the Public Utilities Code is amended
29 to read:

30 377. (a) The commission shall continue to regulate the
31 facilities for the generation of electricity owned by any public
32 utility prior to January 1, 1997, that are subject to commission
33 regulation until the owner of those facilities has applied to the
34 commission to dispose of those facilities and has been authorized
35 by the commission under Section 851 to undertake that disposal.
36 Notwithstanding any other provision of law, no facility for the
37 generation of electricity owned by a public utility may be disposed
38 of prior to January 1, 2006. The commission shall ensure that
39 public utility generation assets, qualifying facility contracts, and
40 other bilateral contracts remain dedicated for the benefit of the

1 public utility’s bundled service customers, provided that nothing
 2 in this section shall be construed to compel any electrical
 3 corporation to renew or renegotiate an expiring contract; and
 4 further provided, that nothing in this section may be construed to
 5 prevent the commission from approving an application to amend,
 6 buyout, or terminate a qualifying facility or other bilateral contract
 7 made pursuant to a voluntarily entered and mutually agreed upon
 8 contract amendment, buyout, or termination, if the commission
 9 determines that the amendment, buyout, or termination is in the
 10 public interest. For purposes of this section, utility owned
 11 generation, qualifying facility contracts and other bilateral
 12 contracts shall be referred to as “utility retained generation.” This
 13 section does not apply to the transfer or sale of generation plants
 14 that are located outside California and are owned exclusively by
 15 companies not based in California. The definition of “utility
 16 retained generation” as provided in this section is without regard
 17 *prejudice* to whether shareholder bilateral contracts that are the
 18 subject of an agreement between the Department of Water
 19 Resources and San Diego Gas and Electric Company in a certain
 20 Memorandum of Understanding are or are not “utility retained
 21 generation.”

22 (b) Notwithstanding any other provision of law, the
 23 commission shall establish rates that enable a public utility
 24 electrical corporation to recover on a timely basis, consistent with
 25 the electrical corporation achieving and maintaining ~~an~~
 26 ~~investment grade credit rating~~ *a rating for outstanding senior*
 27 *unsecured debt of the electrical corporation of at least one rating*
 28 *above the lowest investment grade rating by one or more*
 29 *nationally recognized rating agencies*, all reasonable costs of
 30 producing power and ancillary services from utility retained
 31 generation dedicated to the service of bundled service customers.
 32 Those rates shall ensure that the public utility electrical
 33 corporation is able to recover reasonable operating and capital
 34 costs, including a reasonable return of and on the public utility
 35 electrical corporation’s investment in owned generation assets.

36 (1) Operating costs shall include all customary categories of
 37 operating costs, including, but not limited to, fuel and fuel
 38 transportation costs both fixed and variable, operations and
 39 maintenance expenses, remediation costs, costs of emissions
 40 credits, direct and indirect administrative and general costs, taxes,

1 scheduling and dispatch costs, congestion costs, ancillary service
2 costs, and other transmission-related costs charged to generators.
3 Prior to January 1, 2004, operating costs for the San Onofre
4 Nuclear Generating Station Units 2 and 3 shall be recovered
5 pursuant to nuclear incremental cost incentive plans as authorized
6 by the commission in commission Decision Nos. 96-01-011 and
7 96-94-059.

8 (2) The Southern California Edison Company's investment in
9 generation assets initially shall be set at the amounts recorded on
10 its books of account as of December 31, 2000, including
11 reasonable sites-specific general plant and capital additions made
12 after December 31, 1995, together with their associated regulatory
13 receivable or payable for taxes. For Southern California Edison
14 Company, existing investments for Units 2 and 3 at the San Onofre
15 Nuclear Generating Station and the Palo Verde Nuclear
16 Generating Station shall be recovered over a period ending
17 December 31, 2015, and incremental capital investments placed in
18 service after December 31, 2000, will be recovered from the time
19 they are placed in service, provided that the electrical corporation
20 shall recover an allowance for funds used during construction for
21 capital projects extending for more than one year.
22 Notwithstanding the foregoing, prior to January 1, 2004,
23 incremental capital investments for the San Onofre Nuclear
24 Generating Station Units 2 and 3 shall be recovered pursuant to
25 nuclear incremental cost incentive plans as authorized by the
26 commission in commission Decision Nos. 96-01-011 and
27 96-94-059. The cost of major capital additions and improvements
28 to the ~~public utility's~~ *electrical corporation's* generation assets
29 shall be reviewed and approved by the commission, in the manner
30 set forth in Sections 1005 and 1005.5, in advance of the ~~public~~
31 ~~utility~~ *electrical corporation* being allowed or required to invest
32 in such major capital additions or improvements.

33 (3) Decommissioning costs shall be recovered consistent with
34 commission decisions.

35 (c) Notwithstanding any other provision of law, the
36 commission shall do both of the following:

37 (1) Establish rates that ensure the electrical corporation's
38 entitlement to recover its reasonable procurement costs on a timely
39 basis.

1 (2) Establish procedures designed to ensure that any
2 undercollection or overcollection of procurement costs shall be
3 reconciled in a timely manner and any undercollection will be
4 financed on reasonable terms consistent with ~~the credit rating of~~
5 ~~the electrical corporation as investment grade~~ *a rating for*
6 *outstanding senior unsecured debt of the electrical corporation of*
7 *at least one rating above the lowest investment grade rating by one*
8 *or more nationally recognized rating agencies.* Those procedures
9 shall include, but are not limited to, the development of a
10 framework and criteria for procurement practices, the submission
11 of an annual procurement plan, and the prompt approval or
12 disapproval of contracts consistent with Section 399.10. The
13 commission may not exercise retrospective reasonableness review
14 of power procurement contracts entered into consistent with an
15 approved procurement plan in accordance with Section 399.10.

16 (d) The rates described in subdivisions (b) and (c) shall be
17 separate from rates established for the Department of Water
18 Resources pursuant to Division 27 (commencing with Section
19 80000) of the Water Code and shall be established based on
20 forecasts of costs submitted by the electrical corporation.
21 Differences between revenues and authorized costs shall be
22 tracked in balancing accounts, and the commission shall review
23 the balancing accounts not less than semiannually. Prior to the
24 commission establishing authorized costs, actual costs shall be
25 tracked in the balancing accounts. If the net balances in the
26 electrical corporation's balancing accounts are overcollected or
27 undercollected by an amount that exceeds 10 percent of the
28 electrical corporations's actual recorded generation revenues for
29 the prior calendar year, excluding revenues collected for the
30 Department of Water Resources, the commission shall adjust rates
31 either (1) to refund any net overcollection to customers, in
32 proportion to the class percentage rate increases adopted in the
33 commission Decision 01-05-064 to each ratepayer in a class based
34 on consumption of power, through a bill credit, either on a
35 one-time basis, or amortized over a reasonable period, or (2) to
36 permit the electrical corporation to recover the undercollection in
37 an expeditious manner consistent with enabling the electrical
38 corporation to regain and retain, for the senior outstanding
39 unsecured debt of the electrical corporation, a rating by one or
40 more nationally recognized rating agencies of at least one rating

1 above the lowest investment grade rating. When one or more
2 nationally recognized rating agencies have rated the senior
3 outstanding unsecured debt of the electrical corporation with a
4 rating of at least one rating above the lowest investment grade
5 rating, and that electrical corporation has maintained that rating
6 for at least five consecutive years, then the commission may
7 change the amount that triggers a refund or rate adjustment
8 pursuant to this subdivision, if the amount set by the commission
9 is consistent with maintenance of an investment grade credit rating
10 at least one rating above the lowest investment grade.

11 SEC. 10. Section 379 of the Public Utilities Code is amended
12 to read:

13 379. Nuclear decommissioning costs shall be recovered as a
14 nonbypassable charge until ~~the time as~~ the costs are fully
15 recovered. The commission may accelerate the recovery of
16 decommissioning costs consistent with the public interest.

17 SEC. 10.5. Article 15.5 (commencing with Section 399.10) is
18 added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities
19 Code, to read:

20
21 Article 15.5 Electrical Corporation Procurement Plans
22

23 399.10. (a) ~~No later than~~ *On or before* January 1, 2002, the
24 commission shall determine the allocation of electricity, including
25 quantity, characteristics and duration of electricity delivery, to be
26 provided by the Department of Water Resources under its power
27 purchase contracts to the customers of each electrical corporation.
28 Each electrical corporation shall file a procurement plan with the
29 commission 45 days after the commission specifies the allocation
30 of electricity, including quantity, characteristics and duration of
31 electricity delivery, to be provided by the Department of Water
32 Resources under its power purchase contracts to the customers of
33 the electrical corporation. The proposed procurement plan shall
34 specify the date the electrical corporation intends to resume
35 procurement of electricity for its retail customers, consistent with
36 its obligation to serve, which shall be referred to for purposes of
37 this section as the “proposed commencement date.” The
38 commission shall review and adopt a procurement plan as
39 specified in subdivisions (b), (c), and (d) no later than 90 days prior
40 to the proposed commencement date. ~~An electrical corporation~~

1 ~~that does not possess an investment grade credit rating by one or~~
2 ~~more nationally recognized rating agencies may file a~~
3 ~~procurement plan with the commission, but, except to the extent~~
4 ~~set forth in a binding and enforceable agreement pursuant to~~
5 ~~subdivision (b) of Section 399.21, it may not be required to~~
6 ~~commence procurement on behalf of its customers until its credit~~
7 ~~rating is restored to investment grade by one or more nationally~~
8 ~~recognized rating agencies.~~

9 (b) An electrical corporation's proposed procurement plan
10 shall include, but is not limited to, the following:

11 (1) An assessment of the price risk associated with the
12 electrical corporation's portfolio, including any utility-retained
13 generation, existing power purchase and exchange contracts and
14 proposed contracts, or purchases under which an electrical
15 corporation will procure electricity and electricity-related
16 products, and the remaining open position to be served via spot
17 market transactions.

18 (2) A definition of each electricity product, electricity-related
19 product, and procurement related financial product, including
20 support and justification for the product type and amount to be
21 procured under the plan.

22 (3) The duration of the plan.

23 (4) The duration, timing, and range of quantities of each
24 product to be procured.

25 (5) A competitive procurement process under which the
26 electrical corporation may request bids for procurement-related
27 services, including the format and criteria of the procurement
28 process.

29 (6) An incentive mechanism, if there is one proposed,
30 including the type of transactions to be covered by the mechanism,
31 its respective procurement benchmarks, and other parameters
32 needed to determine the sharing of risks and benefits.

33 (7) The upfront standards and criteria by which the
34 acceptability and eligibility for rate recovery of a proposed
35 procurement transaction will be known by the electrical
36 corporation prior to execution of the transaction. The upfront
37 standards and criteria shall include an expedited approval process
38 for the commission's review of proposed contracts and subsequent
39 approval or rejection of the contracts. The electrical corporation

1 shall propose alternative procurement choices in the event a
2 contract is rejected.

3 (8) Procedures for updating the procurement plan.

4 (9) A showing that the procurement plan will create or maintain
5 a diversified procurement portfolio consisting of both short-term
6 and long-term electricity and electricity-related products.

7 (10) The electrical corporation's risk management policy,
8 strategy, and practices including specific measures of price
9 stability.

10 (11) A plan to achieve appropriate increases in diversity of
11 ownership and diversity of fuel supply of nonutility electrical
12 generation.

13 (12) A mechanism for recovery of reasonable administrative
14 costs related to procurement in the generation component of rates.

15 (c) The commission shall review and accept, modify, or reject
16 each electrical corporation's procurement plan. The commission's
17 review shall consider each electrical corporation's individual
18 procurement situation, and shall give strong consideration to that
19 situation in determining which one or more of the following
20 features shall apply to that electrical corporation. A procurement
21 plan approved by the commission shall contain one or more of the
22 following features, provided that the commission ~~shall~~ *may* not
23 approve a feature or mechanism for an electrical corporation if it
24 finds that the feature or mechanism would impair the restoration
25 of an electrical corporation's creditworthiness:

26 (1) A competitive procurement process under which the
27 electrical corporation may request bids for procurement-related
28 services. The commission shall specify the format of the
29 procurement process, as well as criteria to ensure that the auction
30 process is open and adequately subscribed. Any purchases made
31 in compliance with the commission-authorized process shall be
32 recovered in the generation component of rates.

33 (2) An incentive mechanism that establishes a procurement
34 benchmark or benchmarks and authorizes the electrical
35 corporation to procure from the market, subject to comparing the
36 electrical corporation's performance to the
37 commission-authorized benchmark or benchmarks. This
38 incentive mechanism shall be clear, achievable, and contain
39 quantifiable objectives and standards. The incentive mechanism

1 shall contain balanced risk and reward incentives and shall limit
2 the risk and reward of an electrical corporation.

3 (3) Upfront achievable standards and criteria by which the
4 acceptability and eligibility for rate recovery of a proposed
5 procurement transaction shall be known by the electrical
6 corporation prior to the execution of the bilateral contract for the
7 transaction. The commission shall provide for expedited review
8 and either approve or reject the individual contracts submitted by
9 the electrical corporation pursuant to its procurement plan. To the
10 extent the commission rejects a proposed contract pursuant to this
11 criteria, the commission shall designate alternative procurement
12 choices contained in the procurement plan that will be recoverable
13 for ratemaking purposes.

14 (d) A procurement plan approved by the commission shall
15 accomplish each of the following objectives:

16 (1) Enable the electrical corporation to fulfill its obligation to
17 serve its customers at just and reasonable rates.

18 (2) Eliminate the need for after-the-fact reasonableness
19 reviews of an electrical corporation's actions in compliance with
20 an approved procurement plan, including resulting electricity
21 procurement contracts, practices, and related expenses. However,
22 the commission may establish a regulatory process to verify and
23 assure that each contract was administered in accordance with the
24 terms of the contract, and that contract disputes that may arise are
25 reasonably resolved.

26 (3) Ensure timely recovery of prospective procurement costs
27 incurred pursuant to an approved procurement plan. The
28 commission shall establish rates based on forecasts of
29 procurement costs adopted by the commission, actual
30 procurement costs incurred, or some combination thereof, as
31 determined by the commission.

32 (4) Moderate the price risk associated with serving the
33 electrical corporation's retail customers, including the price risk
34 embedded in its long-term supply contracts, by authorizing an
35 electrical corporation to enter into financial and other
36 electricity-related product contracts.

37 (5) Provide for just and reasonable rates, with an appropriate
38 balancing of price stability and price level in the electrical
39 corporation's procurement plan.



1 (e) The commission shall provide for periodic reviews and
2 prospective modification of an electrical corporation's
3 procurement plan in response to changing market conditions.

4 (f) The commission is authorized to engage an independent
5 consultant or advisory service to evaluate risk management and
6 strategy. The reasonable costs of a consultant or advisory service
7 is a reimbursable expense and eligible for funding pursuant to
8 Section 631.

9 (g) The commission shall adopt appropriate procedures to
10 ensure the confidentiality of any market sensitive information
11 submitted in an electrical corporation's proposed procurement
12 plan or resulting from or related to its approved procurement plan,
13 including, but not limited to, proposed or executed power purchase
14 contracts, data request responses, or consultant reports, provided
15 that the Office of Ratepayer Advocates and other consumer groups
16 that are nonmarket participants shall be provided access to the
17 information under confidentiality procedures authorized by the
18 commission.

19 (h) Nothing in this article alters, modifies, or amends the
20 commission's oversight of affiliate transactions under its rules and
21 decisions or the commission's existing authority to investigate and
22 penalize an electrical corporation's alleged fraudulent activities,
23 or to disallow costs incurred as a result of gross incompetence,
24 fraud, abuse, or similar grounds.

25 (i) An electrical corporation that serves less than 500,000
26 electric retail customers within the state may file with the
27 commission a request for exemption from the provisions of this
28 article, which the commission shall grant upon a showing of good
29 cause.

30 (j) Prior to its approval pursuant to Section 851 of any
31 divestiture of generation assets owned by an electrical corporation
32 on September 1, 2001, the commission shall determine the impact
33 of the proposed divestiture on the electrical corporation's
34 procurement rates and may only approve the divestiture if the
35 commission determines that the divestiture *is in the public interest*
36 *and* will result in net ratepayer benefits.

37 399.11. Nothing in this article is intended to suggest that
38 procurement of electricity from third parties is the preferred
39 method of fulfilling an electrical corporation's obligation to serve
40 its customers at just and reasonable rates.



SEC. 11. Article 16 (commencing with Section 399.20) is added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 16. Electricity Market Stabilization

399.20. For the purposes of this article, the following terms shall have the following meanings:

(a) (1) “Electrical corporation debt repayment set-aside” means a nonbypassable rate and other charges, including, but not limited to, distribution, connection, disconnection, and termination rates and charges, that are authorized by the commission in a financing order to allow the electrical corporation to recover all or any portion of both (A) qualified costs, and (B) the costs of providing, recovering, financing, or refinancing the qualified costs through a plan approved by the commission in the financing order, including, but not limited to, the costs of issuing, servicing, and retiring electricity market stabilization bonds. For the purposes of this article, an electrical corporation debt repayment set-aside shall be imposed on a nonbypassable basis at a uniform rate per kilowatthour of electricity consumed pursuant to Section 399.25.

(2) If requested by the electrical corporation in its application for a financing order, an electrical corporation debt repayment set-aside may include nonbypassable rates and other charges to recover federal and state taxes whose recovery period is modified by the transactions approved in the financing order.

(b) “Electricity market stabilization bonds” means bonds, notes, certificates of participation or beneficial interest, or other evidences of indebtedness or ownership, issued pursuant to an executed indenture or other agreement of a financing entity, the proceeds of which are used, directly or indirectly, to provide, recover, finance, or refinance qualified costs, and that are directly or indirectly secured by, or payable from, stabilization property.

(c) “Financing entity” means an electrical corporation or any entity designated by the electrical corporation to issue electricity market stabilization bonds or acquire stabilization property, or both, pursuant to this article.

(d) “Financing order” means an order of the commission adopted in accordance with this article approving an electrical

1 corporation debt repayment set-aside. A financing order shall
2 include, without limitation, a procedure for the expeditious
3 approval by the commission of periodic adjustments to the
4 electrical corporation debt repayment set-aside included therein to
5 ensure timely recovery of the qualified costs and the costs of
6 issuing, servicing, refinancing, and retiring the electricity market
7 stabilization bonds approved by the financing order.

8 (e) “Net undercollected costs” means the difference between
9 the cost of the energy and ancillary services provided by the
10 electrical corporation and the energy and ancillary services related
11 revenues received by the electrical corporation from retail
12 customers for the period from May 1, 2000, to January 18, 2001,
13 inclusive.

14 (f) “Qualified costs” means, with respect to an electrical
15 corporation, all of the following:

16 (1) The net undercollected costs in the amount determined
17 pursuant to Section 399.22.

18 (2) Interest associated with the net undercollected costs prior to
19 the issuance of bonds as determined pursuant to Section 399.22.

20 (g) Notwithstanding any other provision of law an electrical
21 corporation may not recover from the proceeds of electric market
22 stabilization bonds more than two billion five hundred million
23 dollars (\$2,500,000,000) of net undercollected costs, plus interest
24 determined under paragraph (2) of subdivision (f), in an amount
25 of not more than four hundred million dollars (\$400,000,000).

26 (h) (1) “Stabilization property” means the property right
27 created pursuant to this article including, without limitation, the
28 right, title, and interest of an electrical corporation or its transferee:

29 (A) In and to the tariff established pursuant to a financing order,
30 as adjusted from time to time in accordance with the financing
31 order, and to all revenues, collections, claims, payments, moneys,
32 or proceeds of or arising from the tariff.

33 (B) To be paid the amount that is determined in a financing
34 order to be the amount that the electrical corporation or its
35 transferee is lawfully entitled to receive pursuant to the provisions
36 of this article, and the proceeds thereof.

37 (C) In and to all revenues, collections, claims, payments,
38 moneys, or proceeds of or arising from the tariffs or constituting
39 an electrical corporation debt repayment set-aside that are the
40 subject of a financing order.

(D) To the nonbypassable rates and other charges referred to in subdivision (a) imposed pursuant to a financing order.

(E) In and to all rights to obtain adjustments to the tariff pursuant to the terms of the financing order.

(2) “Stabilization property” shall constitute a current property right notwithstanding the fact that the value of the property right will depend on consumers using electricity or, in those instances where consumers are customers of a particular electrical corporation, the electrical corporation performing certain services.

399.21. (a) Electricity market stabilization bonds pursuant to this article may only be issued by an electrical corporation serving more than 4,000,000 customers which is also a gas corporation serving fewer than 5,000 customers. To issue electricity market stabilization bonds the electrical corporation shall submit to the commission an application to issue electricity market stabilization bonds in an amount necessary to recover qualified costs. No electricity market stabilization bonds may be issued without commission approval.

(b) The commission shall approve the application upon verification of the qualified costs pursuant to Section 399.22, and a certification by the Director of Finance that the electrical corporation, and its holding company to the extent of the holding company’s obligations set forth in paragraphs (3) and (5), have entered into a binding and enforceable agreement with the state in which, at a minimum, the electrical corporation and its holding company agree to all of the following:

(1) Sell to retail end-use customers all electricity generated by assets owned by the electrical corporation and at cost-based rates as determined by the commission.

(2) Apply the proceeds of the electricity market stabilization bonds, after payment of issuance costs, in accordance with the intent of ~~subdivision (c)~~ paragraph (11).

(3) Provide the Department of Water Resources or its designee with the entire output from the Sunrise generating facility for a term of not less than 10 years at cost-of-service based rates pursuant to a contract previously executed between an affiliate of the holding company and the Department of Water Resources or its designee.

1 (4) *Convey electrical corporation owned land to a trust*
2 *pursuant to Article 17 (commencing with Section 399.30). Section*
3 *851 and Section 21080 of the Public Resources Code are not*
4 *applicable to the conveyance required under this paragraph.*

5 (5) Dismiss, with prejudice, any and all legal claims the
6 electrical corporation and its holding company may have or
7 relinquish any legal claim the electrical corporation and its holding
8 company could have had against the State of California or any
9 agency, department or subdivision thereof, the federal
10 Government, or the commission for a taking or a violation of the
11 filed rate doctrine arising from or related to the facts asserted in the
12 litigation; and any claims challenging actions taken by the
13 commission prior to the date of the dismissal or release, or actions
14 that the commission failed to take prior to the dismissal or release,
15 to implement Assembly Bill 1 of the 2001–02 First Extraordinary
16 Session (Ch. 4, Stats. 2001–02 1st Ex. Sess.) and Assembly Bill
17 6 of the 2001–02 First Extraordinary Session (Ch. 2, Stats.
18 2001–02 1st Ex. Sess.).

19 ~~(5)–~~

20 (6) Resume procurement of the full net short needs and
21 electricity requirements for retail customers within the electrical
22 corporation’s service area as soon as the company is rated at least
23 investment grade by one or more nationally recognized rating
24 agencies or January 1, 2003, whichever occurs sooner.

25 ~~(6)–~~

26 (7) Relinquish all claims against the state for commandeering
27 the electrical corporation’s block forward market contracts
28 purchased through the ~~California~~ Power Exchange.

29 ~~(7)–~~

30 (8) Agree to administer the power procurement contracts that
31 the Department of Water Resources may request the electrical
32 corporation to administer.

33 ~~(8)–~~

34 (9) (A) Provide the state with an irrevocable option for a
35 period of not less than five years to purchase the transmission
36 facilities owned by the electrical corporation.

37 (B) The option shall include all of the following:

38 (i) The purchase price shall be *fair market value, not to exceed*
39 *two times net book value.*

1 (ii) The state shall purchase any entitlements to use the
2 transmission facilities from any local publicly owned electric
3 utility that owns those entitlements and that is a participating
4 transmission owner in the Transmission Control Agreement
5 among the Independent System Operator and transmission
6 owners.

7 (iii) Prior to acquiring any transmission facilities, the state shall
8 contract with the electrical corporation for the electrical
9 corporation to perform all operation and maintenance of the
10 transmission facilities. The contract shall be for a term of 20 years.
11 The contract shall provide that the electrical corporation recover
12 its costs of providing operation and management services along
13 with a reasonable profit. The contract shall survive the sale,
14 transfer, exchange, or assignment of all or any portion of the
15 transmission facilities. The contract shall, consistent with the
16 provisions of this section, be designed to satisfy the requirements
17 of the United States Internal Revenue Service Revenue Procedure
18 97-13, Section 5.03(3).

19 (iv) Prior to end of the 20-year period of the operation and
20 maintenance contract and for each 20-year period thereafter, the
21 Department of Water Resources shall enter into a new contract to
22 provide operation and maintenance services. When selecting the
23 entity to provide those services, the Department of Water
24 Resources shall base its selection on all of the following factors:

25 (I) Operational efficiencies available from using the same
26 entity that provides operation and maintenance services for an
27 interconnected distributing utility.

28 (II) Prior experience providing operation and maintenance
29 services for transmission facilities in the topographic and
30 climatological conditions found in the state.

31 (III) Availability of a workforce with the existing skill and
32 experience to maintain a high degree of transmission system
33 reliability.

34 (C) For purposes of subparagraph (B), “operation and
35 maintenance” of transmission facilities means operation,
36 maintenance, repair, replacement, reconstruction, improvement,
37 enlargement, expansion, or extension of the transmission
38 facilities.

(D) The state may exercise the option provided under this paragraph only upon approval of that action by a subsequently enacted statute.

~~(9)~~

(10) Confirm that the electrical corporation shall make payments of all amounts owed by the electrical corporation for energy and capacity delivered by any qualifying facility prior to March 27, 2001, together with accrued and unpaid interest thereon in accordance with agreements regarding energy pricing and payment issues entered into by and between the electrical corporation and the qualifying facilities.

~~(10)~~

(11) Agree that any revenues derived from the issuance of electricity market stabilization bonds for the amount authorized pursuant to this section shall be used solely to pay procurement-related debt and may not be expended for unpaid debt or charges imposed on the electrical corporation by the Power Exchange, the Independent System Operator, or by any suppliers of wholesale electricity purchased on or before January 18, 2001, provided that this provision shall not restrict payments to any qualifying facility or bilateral contract counterparty. For purposes of this paragraph “procurement-related debt” shall include, without limitation, the electrical corporation’s obligations and liabilities for the payment of Power Exchange customer credits. For purposes of this paragraph “Power Exchange customer credits” means all outstanding customer credits, as defined in commission Decision 97-08-056 of August 1, 1997, and as modified by commission Decision 99-06-058 of June 10, 1999.

~~(11)~~

(12) Agree that for any year during which the electrical corporation’s authorized return on equity may not be reduced pursuant to Section 454.11, the electrical corporation may not be permitted to pay a distribution to shareholders of cash, liquid assets, or property without consideration of substantially equal value, whether by way of dividends or otherwise, unless all of the following conditions are met:

(A) The electrical corporation is permitted to make this payment in compliance with applicable law.

(B) The outstanding senior unsecured debt of the electrical corporation is rated with a rating at least one rating above the

lowest investment grade rating by one or more nationally recognized rating agencies.

(C) One or more nationally recognized rating agencies have confirmed, after reviewing the dividends proposed to be paid for the fiscal year in question, that the outstanding senior unsecured debt of the electrical corporation will continue to be rated at least one rating above the lowest investment grade rating after the payment of the dividends.

(c) The agreement entered into pursuant to subdivision (b) may not limit the electrical corporation's ability to do either of the following:

(1) Pay dividends to holders of its preferred stock that is issued and outstanding as of August 1, 2001.

(2) Make payments that implement its stand-alone tax treatment, consistent with subdivision (d).

(d) It is the intent of the Legislature in authorizing the issuance of a financing order pursuant to this article to continue the current stand-alone tax treatment of the electrical corporation. Accordingly, the electrical corporation shall agree, in a binding and enforceable agreement pursuant to subdivision (b), to have the electrical corporation apply the approximately four hundred million dollars (\$400,000,000) in payments due to the electrical corporation from such stand-alone tax treatment for the 2000 taxable year, consisting of the tax refund of the estimated quarterly tax payments made by the electrical corporation for the 2000 taxable year and an additional amount equal to the federal loss carryback the electrical corporation would have had if it were not part of the holding company's consolidated group of taxpayers, to the reduction or elimination of the past debt of the electrical corporation in order to restore the creditworthiness of the electrical corporation by the earliest feasible date.

(e) The binding and enforceable agreement in subdivision (b) shall be enforceable against the electrical corporation by the commission in proceedings.

(f) If the restriction on the electrical corporation's ability to pay dividends pursuant to paragraph (12) of subdivision (b) results in the equity component of the electrical corporation's capital structure temporarily to exceed that authorized by the commission, the commission shall authorize the electrical corporation to recover a reasonable return on that portion of the retained equity

1 *that the commission finds is in excess of that needed to achieve the*
2 *intended purposes of paragraph (12) of subdivision (b).*

3 399.22. This section shall apply to all electrical corporations
4 subject to Section 399.21.

5 (a) The commission and the State Auditor shall verify for an
6 electrical corporation the amount of the qualified costs and other
7 amounts permitted to be recovered through an electrical
8 corporation debt repayment set-aside not later than 60 days from
9 the date of submission of the amount to be verified. To the extent
10 that the verification and any adjustments are not completed by that
11 date, the qualified costs shall be the amount submitted by the
12 electrical corporation. The commission review may only be for the
13 purpose of verifying recorded amounts and making any
14 adjustments resulting from that verification. Notwithstanding any
15 other provision of law, qualified costs and other amounts permitted
16 to be recovered through an electrical corporation debt repayment
17 set-aside shall be recoverable in accordance with this article.

18 (b) (1) Notwithstanding any other provision of law, the
19 commission shall establish, not later than 60 days from the date of
20 the filing of an application of an electrical corporation, an
21 electrical corporation debt repayment set-aside designed to enable
22 the electrical corporation to recover the qualified costs described
23 in the application over an amortization period to be determined
24 consistent with this article.

25 (2) The electrical corporation debt repayment set-aside shall be
26 established by the adoption of a financing order as set forth in this
27 section. The commission shall establish an electrical corporation
28 debt repayment set-aside sufficient to enable the electrical
29 corporation to recover the full amount of its qualified costs set
30 forth in the financing order.

31 (3) Customers, as specified in Section 399.25, shall continue to
32 pay the electrical corporation debt repayment set-aside in
33 accordance with the financing order until the electrical corporation
34 has recovered the qualified costs set forth in the financing order
35 and, if electricity market stabilization bonds have been issued in
36 connection therewith, until those bonds are paid in full by the
37 financing entity. Notwithstanding any other provision of law,
38 rates, and charges included within the electrical corporation debt
39 repayment set-aside shall constitute disconnectible charges, the
40 nonpayment of which by a customer, in whole or in part, entitles

the electrical corporation to disconnect electric service under procedures set forth in commission tariffs.

(c) The commission shall issue a financing order in accordance with this article to facilitate the provision, recovery, financing, or refinancing of qualified costs. A financing order shall be adopted only upon the application of an electrical corporation and shall become effective in accordance with its terms only after the electrical corporation files with the commission the electrical corporation's written notice of intent to comply with all terms and conditions of the financing order. Notwithstanding Section 1756, Section 1759, or any other provision of law, no court, except the California Supreme Court, has jurisdiction to review, reverse, correct, or annul any financing order, or to suspend or delay the execution or operations thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties in respect thereof, as provided by law and the rules of the court.

(d) Notwithstanding Section 455.5, Section 1708, or any other provision of law, except as otherwise provided in this subdivision, the financing orders and the electrical corporation debt repayment set-aside shall, upon the effectiveness of the financing orders, be irrevocable and the commission may not have authority either by rescinding, altering, or amending the financing order or otherwise, to revalue or revise for ratemaking purposes the qualified costs, or the costs of providing, recovering, financing, or refinancing the qualified costs, determine that the electrical corporation debt repayment set-aside is unjust or unreasonable, or in any way reduce or impair the value of stabilization property either directly or indirectly by taking the electrical corporation debt repayment set-aside into account when setting other rates for the electrical corporation; nor shall the amount of revenues arising with respect thereto be subject to reduction, impairment, postponement, or termination. Except as otherwise provided in this paragraph, the state does hereby pledge and agree with the electrical corporation, the owners of stabilization property, and holders of electricity market stabilization bonds that the state shall neither limit nor alter the electrical corporation debt repayment set-aside, stabilization property, financing orders, and all rights thereunder until the electrical corporation has recovered all qualified costs, and if electricity market stabilization bonds have been issued in connection therewith, obligations under those bonds, together

1 with the interest thereon, are fully met and discharged, provided
2 that nothing contained in this section shall preclude the limitation
3 or alteration of these matters if adequate provision is made by law
4 for the protection of the owners and holders. That pledge shall be
5 deemed to be part of a financing order upon adoption thereof by
6 the commission. Notwithstanding any other provision of this
7 section, the commission shall approve the adjustments to the
8 electrical corporation debt repayment set-aside as it determines to
9 be necessary to ensure timely recovery of all qualified costs that
10 are the subject of the pertinent financing order, and the cost of
11 capital associated with the provision, recovery, financing, or
12 refinancing thereof, including the cost of issuing, servicing, and
13 retiring any electricity market stabilization bonds issued to finance
14 qualified costs contemplated by the financing order.

15 (e) The commission shall establish procedures for the
16 expeditious processing of applications for financing orders,
17 including the approval or disapproval thereof not later than 60 days
18 from the date of the electrical corporation's submittal of an
19 application. The commission shall provide in any financing order
20 for a procedure for the expeditious approval by the commission of
21 periodic adjustments to the electric corporation debt repayment
22 set-aside that is the subject of the pertinent financing order, as
23 required by subdivision (d). The procedure shall require the
24 commission to determine whether the adjustments are required on
25 each anniversary of the issuance of the financing order, and at the
26 additional intervals as may be provided for in the financing order,
27 and for the adjustments, if required, to be approved within 90 days
28 of each anniversary of the issuance of the financing order, or of
29 each additional interval provided for in the financing order.

30 (f) The electrical corporation debt repayment set-aside shall
31 constitute stabilization property when, and to the extent that, a
32 financing order authorizing the electrical corporation debt
33 repayment set-aside has become effective in accordance with this
34 article, and the stabilization property shall thereafter continuously
35 exist as property for all purposes with all of the rights and
36 privileges of this article for the period and to the extent provided
37 in the financing order, but in any event until (1) the electrical
38 corporation has recovered the qualified costs and (2) the electricity
39 market stabilization bonds are paid in full, including all principal,
40 interest, premium, costs, and arrearages thereon.

(g) Sections 843, 844, and 845 shall apply with respect to this article, as if those provisions were set forth in this article, subject to the following:

(1) References in Sections 843, 844, and 845 to a “financing entity” shall mean a financing entity as defined in this article.

(2) References in Sections 843, 844, and 845 to a “financing order” shall mean a financing order as defined in this article.

(3) References in Sections 843, 844, and 845 to “fixed transition amounts” shall mean an electric corporation debt repayment set-aside as defined in this article.

(4) References in Sections 843, 844, and 845 to “rate reduction bonds” shall mean electricity market stabilization bonds as defined in this article.

(5) References in Sections 843, 844, and 845 to “transition costs” shall mean qualified costs as defined in this article.

(6) References in Sections 843, 844, and 845 to “transition property” shall mean stabilization property as defined in this article.

399.23. With respect to an electrical corporation debt repayment set-aside relating to financing orders providing for recovery of qualified costs, the obligation of the electrical corporation to collect and remit the electrical corporation debt repayment set-aside consistent with a financing order shall continue irrespective of whether that electrical corporation is providing electric power or other services to the retail customers obligated to pay the electrical corporation repayment set-aside.

399.24. The authority of the commission to issue financing orders providing for recovery of qualified costs shall expire on December 15, 2006. The expiration of the authority shall have no effect upon financing orders adopted by the commission pursuant to this article or any stabilization property arising therefrom, or upon the charges authorized to be levied thereunder, or the rights, interests, and obligations of the electrical corporation or a financing entity or holders of electricity market stabilization bonds pursuant to the financing order, or the authority of the commission to monitor, supervise, or take further action with respect to the order in accordance with the terms of this article and of the order.

399.25. The electrical corporation debt repayment set-aside established by order of the commission pursuant to this article shall be paid exclusively by customers in the electrical

1 corporation's service territory with a maximum peak demand on
2 the electrical corporation's system exceeding 20 kilowatts, based
3 on the usage of the prior year. For customer load served by
4 customer generation on or before January 17, 2001, the customer's
5 maximum peak demand for purposes of this section shall not be
6 based on demand under the electrical corporation's tariff
7 governing standby service or any successor tariff.

8 399.26. The commission may not establish an electrical
9 corporation debt repayment set-aside for the purpose of providing
10 for the recovery of qualified costs or issue a financing order with
11 regard to an electrical corporation, unless both of the following
12 conditions have been met:

13 (a) The electrical corporation has entered into a binding and
14 enforceable agreement under subdivision (b) of Section 399.21,
15 and the Director of Finance has advised the commission that the
16 electrical corporation has entered into the definitive agreements
17 which by the terms of that binding and enforceable agreement are
18 required to be entered into as of the time of the taking of that action.

19 (b) The electrical corporation has consented to an order of the
20 commission providing for cost-of-service based rates to apply to
21 generation assets owned by the electrical corporation to the extent
22 provided in the applicable agreement and for the period provided
23 in the agreement and obligating the electrical corporation not to
24 apply to the commission for approval to sell those generation
25 assets for the period provided in the agreement.

26 399.27. (a) Except as provided in a binding and enforceable
27 agreement under subdivision (b) of Section 399.21, financing
28 entities may issue electricity market stabilization bonds upon
29 approval by the commission in the pertinent financing orders. The
30 terms and conditions of those bonds shall be approved by the
31 Director of Finance in accordance with the agreement. That
32 approval shall be conclusive and binding and is not subject to
33 review or contest except in accordance with the agreement. In
34 connection with that approval, the Director of Finance may engage
35 those independent consultants as he or she determines to be
36 appropriate. In order to permit the Director of Finance to contract
37 for those purposes, the contract or agreement with any
38 independent consultant may include provision for the
39 indemnification of parties thereto, however; that contract or
40 agreement may not include provisions for the indemnification,

including indemnification for any costs of defense, of any party for acts or omissions involving gross negligence, recklessness, or willful misconduct by that party or by the party's employees, agents, or contractors. The bonds shall be nonrecourse to the credit or any assets of the electrical corporation, other than the stabilization property as specified in the pertinent financing order.

(b) Electrical corporations may sell and assign all or portions of their interest in stabilization property to an affiliate. Electrical corporations or their affiliates may sell or assign their interests to one or more financing entities that make that property the basis for issuance of the bonds to the extent approved in the pertinent financing orders. Electrical corporations, their affiliates, or financing entities may pledge or grant a security interest in stabilization property as collateral, directly or indirectly, for the bonds to the extent approved in the pertinent financing orders providing for a security interest in the stabilization property. In addition stabilization property may be sold or assigned by (1) the financing entity or a trustee for the holders of the bonds in connection with the exercise of remedies upon a default, or (2) any person acquiring the stabilization property after a sale or assignment pursuant to this subdivision.

(c) To the extent that any interest in stabilization property is so sold or assigned, or is so pledged as collateral or a security interest granted therein, the commission shall authorize the electrical corporation to contract with the financing entity that it will continue to operate its system to provide service to its customers, will collect amounts in respect of the corporation debt repayment set-aside for the benefit and account of the financing entity, and will account for and remit these amounts to or for the account of the financing entity. Contracting with the financing entity in accordance with that authorization shall not impair or negate the characterization of the sale, assignment, or pledge, or grant of security interests as an absolute transfer, a true sale, or security interest, as applicable. With respect to corporation debt repayment set-aside relating to financing orders providing for recovery of qualified costs, the obligation of the electrical corporation to collect and remit the corporation debt repayment set-aside consistent with a financing order shall continue irrespective of whether that electrical corporation is providing electric power or

1 other services to the retail customers obligated to pay those
2 corporation debt repayment set-aside.

3 (d) Notwithstanding Section 1708 or any other provision of
4 law, any requirement under this article or a financing order that the
5 commission take action with respect to the subject matter of a
6 financing order shall be binding upon the commission, as it may
7 be constituted from time to time, and any successor agency
8 exercising functions similar to the commission and the
9 commission shall have no authority to rescind, alter, or amend that
10 requirement in a financing order. The approval by the commission
11 in a financing order of the issuance by an electrical corporation or
12 a financing entity of the bonds shall include the approvals, if any,
13 as may be required by Article 5 (commencing with Section 816)
14 of Chapter 4, and Section 701.5. Nothing in Section 701.5 shall be
15 construed to prohibit the issuance of the bonds upon the terms and
16 conditions as may be approved by the commission in a financing
17 order. Section 851 shall not be applicable to the transfer or pledge
18 of, or grant of a security interest in, stabilization property, the
19 issuance of the bonds, or related transactions approved in a
20 financing order.

21 399.28. Any sale, assignment, or other disposition of the
22 utility assets, including the grant of easements and conveyances in
23 fee of certain lands for conservation purposes, of an electrical
24 corporation to the Department of Water Resources or any other
25 authorized state agency or authority pursuant to a binding and
26 enforceable agreement, as defined in Section 399.21, and any
27 implementing agreements described in that agreement, are not
28 subject to the commission's approval.

29 SEC. 12. *Article 17 (commencing with Section 399.30) is*
30 *added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities*
31 *Code, to read:*

32
33 *Article 17. Conservation Lands*
34

35 399.30. (a) *An electrical corporation authorized to recover*
36 *qualified costs pursuant to Article 16 (commencing with Section*
37 *399.20) shall transfer to a trust specified in subdivision (b) its*
38 *complete interest, except for an easement reserving the rights for*
39 *existing utility facilities, as of the effective date of this section, in*
40 *the lands identified in this subdivision. Lands to be transferred, if*

not identified by legal description or the assessor's parcel number; shall contain sufficient information regarding the nature, general location, scope, and extent of the real property, fixtures, improvements, or facilities that would place third parties on inquiry notice of the right, title, or interest claimed by the state or its subdivisions or creations, by reason of the deed, assignment, or other instrument of conveyance. The lands identified in this subdivision shall be conveyed and held by the trust for a determination pursuant to this section, except that conservation easements shall be transferred on lands that are subject to licensure by the Federal Energy Regulatory Commission and that are producing electricity as of the effective date of the act adding this section, and all other interests in watershed, inland, forest, desert, and coastal land or lands of potential conservation value owned by the electrical corporation on the effective date of the act adding this section shall be conveyed as they are held by the electrical corporation:

(1) Fresno and Madera Counties: Jackass Meadows containing approximately 280 acres, Big Creek 3 and Big Creek 4 together consisting of approximately 282 acres, 14,425 acres of Shaver Lake, but not to include the area known as the 2,500 acre Edison Specific Plan as approved in the county general plan, and Dinkey Creek, consisting of approximately 5,360 acres.

(2) Various properties in the eastern Sierra Nevada consisting of approximately 825 acres and known generically as the Lee Vining HQ property, Lundy Reservoir, Bishop Creek Canyon, Bishop Creek Powerhouses 3, 5, and 6, Owens Lake, and Rush Creek Powerhouse.

(b) The state, acting through the Secretary of the Resources Agency, shall establish a trust to hold the interests in land conveyed by the electrical corporation. The state shall convey all of its interest in approximately 160 acres lying between Shaver Lake's Dorabella Cove, on the east, the United States Forest Service's Camp Dorabella on the east and south, other Southern California Edison Company property on the south, Highway 168 on the west, and Camp Edison on the north, for California State University Fresno's proposed Sierra Center for Education and Research. For the remaining land, the state shall seek the assistance of qualified nonprofit organizations referenced in Section 815.3 of the Civil Code to establish and operate the trust.

1 *The trust shall hold the interests in land conveyed pursuant to*
2 *subdivision (a) by the electrical corporation.*

3 *(c) The trust, acting at the direction of the Secretary of the*
4 *Resources Agency, shall undertake a review process of the lands*
5 *that will consider the retention of fee title or conservation*
6 *easement, the use or uses of the lands, including the conservation,*
7 *natural resource, public recreation, existing and planned water*
8 *use, and public trust values of the lands, and including the possible*
9 *disposition of the lands or interests in land conveyed to the state.*
10 *The review process shall include formation of an advisory council,*
11 *chaired by the secretary or his or her designee, that consists*
12 *equally of representatives of state government, each local*
13 *government with jurisdiction over the transferred lands, end user*
14 *water authority interests, local commercial interests, and local*
15 *conservation interests. The United States Bureau of Reclamation*
16 *shall be invited to participate as a member of the advisory council.*
17 *State government representatives shall be appointed from among*
18 *the Resources Agency, the Wildlife Conservation Board, the State*
19 *Lands Commission, the Department of Parks and Recreation, the*
20 *Department of Fish and Game, and the Coastal Conservancy. Ex*
21 *officio members may be appointed at the discretion of the*
22 *secretary. The review process should include a series of public*
23 *meetings in communities near the lands identified in subdivision*
24 *(a) and in areas potentially affected by land use decisions.*

25 *(d) The management plan developed by the state for lands*
26 *transferred pursuant to this section shall be consistent with any*
27 *county or city general plans, zoning, or such other land use*
28 *management, regulatory, or permitting requirements and*
29 *procedures.*

30 *(e) The purpose of the public review process is to ensure the*
31 *permanent conservation of these lands for their public interest*
32 *value, including fish, wildlife, and habitat; compatible human*
33 *recreation; protection of open space and aesthetic values;*
34 *preservation of historic and cultural resources; and protection of*
35 *existing and planned water use, including, water quality and*
36 *watershed functions. An additional objective is to increase*
37 *management efficiency by consolidating mixed public and*
38 *electrical corporation lands under public ownership.*

39 *(f) Notwithstanding subdivision (e), legal nonutility uses of the*
40 *property existing as of the time the easement or other real property*

1 *interest is conveyed shall be permitted to continue. If otherwise*
2 *consistent with existing law, utility uses, including the operation*
3 *and maintenance, repair, replacement, and installation of public*
4 *utility infrastructure, including, but not limited to, water and sewer*
5 *pipelines, and electric and telecommunication lines, existing as of*
6 *the time the easement or other real property interest is conveyed,*
7 *shall be permitted to continue. If otherwise consistent with existing*
8 *law, expansion of hydroelectric utility facilities located on the*
9 *property as of the time of conveyance to the state shall be*
10 *permitted, subject to the approval of the state and federal agencies*
11 *having jurisdiction over any expansion, and subject to*
12 *certification by the secretary that public trust values will obtain a*
13 *net benefit by that expansion.*

14 *(g) Notwithstanding subdivision (e), timber harvesting*
15 *activities for which permits have been obtained or for which*
16 *renewed permits are eligible to be obtained as of the effective date*
17 *of the act that added this section shall be permitted on the conveyed*
18 *lands, subject to modification based on management and*
19 *disposition plans approved by the state. Applications for new*
20 *timber harvest plans subsequent to that effective date shall be*
21 *granted only upon certification by the Department of Forestry and*
22 *Fire Protection and approval by the Department of Fish and Game*
23 *and the appropriate regional water control board that the*
24 *activities are accompanied by a mitigation plan that results in a net*
25 *benefit to public trust resources.*

26 *(h) The operation and maintenance, repair, replacement, and*
27 *installation of public utility infrastructure, including, but not*
28 *limited to, water and sewer pipelines, and electric and*
29 *telecommunications lines for nonutility and other uses shall be*
30 *allowed, subject to the extent those activities are permitted by the*
31 *terms of the management and disposition plans approved by the*
32 *state.*

33 *(i) Income derived from the conveyed lands from activities*
34 *exclusive of hydroelectric generation that were authorized by the*
35 *electrical corporation prior to the effective date of the act that*
36 *added this section shall remain assets of the electrical corporation*
37 *or its designees. Income derived from these lands subsequent to*
38 *that effective date exclusive of hydroelectric generation shall*
39 *remain the property of the state and shall be used to defray*
40 *expenses associated with these property transfers.*

1 (j) *The Secretary of the Resources Agency shall certify that*
2 *lands found to possess significant public values shall be managed*
3 *in perpetuity by the state to maintain or enhance those values. The*
4 *public review process may not recommend actions that are*
5 *inconsistent with these objectives. The state shall recommend*
6 *actions that are consistent with the current land management*
7 *practices that have been implemented by the electrical*
8 *corporation. The state has the right to, and may, impose conditions*
9 *to protect open space, watershed, existing and planned*
10 *downstream water uses, and public trust resources for all lands*
11 *that are eventually transferred or otherwise disposed of by the state*
12 *following the public review process.*

13 (k) *The state may transfer its title or possessory interests that*
14 *ensure management in perpetuity for conservation of those public*
15 *trust values in those lands to the electrical corporation, a local*
16 *conservancy, state, federal, or local governmental agencies,*
17 *special districts, Indian tribes or tribal entities, or nonprofit*
18 *organizations qualified under Section 170(h) of the Internal*
19 *Revenue Code and Section 815.3 of the Civil Code, that are*
20 *competent and appropriate to own or manage the lands as required*
21 *by this section, along with sale of remaining possessory interest to*
22 *a compatible third party.*

23 (l) *New or modified economic uses of lands found to possess*
24 *significant public values may occur if compatible with the primary*
25 *purpose of protection or enhancement of existing and planned*
26 *water uses, and existing environmental and recreational uses.*

27 (m) *Lands not found to possess significant public values may be*
28 *used for land exchanges to protect other lands that possess*
29 *significant public values or may be disposed of to generate income*
30 *to acquire those other lands.*

31 (n) *On January 1, 2003, the advisory committee shall make*
32 *recommendations to the Legislature and the Secretary of the*
33 *Resources Agency about the final management or disposition*
34 *recommendations concerning the lands identified in subdivision*
35 *(a). Pursuant to directives of the secretary, and with the same*
36 *public process established in this section, periodic reviews of the*
37 *management of these lands or interests in these lands that are*
38 *transferred to the state by an electrical corporation, are authorized*
39 *in order to assess the stewardship of public trust resources.*

(o) Existing public access on these lands shall be maintained during the public review process unless a different arrangement is agreed upon that is separately negotiated by and between the electric corporation and the state.

(p) Notwithstanding any other provision of law, the electrical corporation shall retain legal responsibility for all environmental liabilities arising by operation of law based on its prior ownership and interest in the lands conveyed to the state. The electrical corporation shall indemnify and hold harmless the state or the trust or the state's successors and assigns against liability arising out of the electrical corporation's use or ownership prior to the transfer, whether that liability is based on ownership in fee or another lesser interest in the conveyed lands.

(q) The Secretary of the Resources Agency alone shall have the authority to transfer, encumber, or dispose of lands or interests in lands conveyed to the state by the electrical corporation, except that the secretary may designate a state agency or department with expertise in land ownership and conveyance transactions to be his or her designee.

(r) With respect to any lands transferred to a trust pursuant to this article, the state shall enter into a long-term operations and maintenance contract with the electrical corporation for purposes of managing those properties upon which leases, licenses, or other developments have occurred or which have been permitted by the county or the electrical corporation as of the effective date of the act adding this section. The operations and maintenance contract shall set forth the terms and conditions by which the lands shall be managed pursuant to the conservation easements and management plans developed by the state. Management responsibilities shall include, but not be limited to, all of the following:

(1) Operating and maintaining campgrounds, concessions, and other existing developments that the electrical corporation operated and maintained as of the effective date of the transfer.

(2) Managing existing structures and developments on the lands, consistent with the terms and conditions of the leases or other agreements applicable to the lands, at the time of transfer to the state.

(3) Finalizing a recordation process as described in subdivision (t).

(s) With respect to any lands transferred to a trust pursuant to this article, the operations and maintenance contract between the state and the electrical corporation shall provide that the electrical corporation shall make payments to the county in lieu of property taxes as though the electrical corporation continued to own all of the lands in fee simple. The State Board of Equalization shall continue to assess the lands and determine the amount of the payment owed to the county as though the electrical corporation continued to own the lands in fee simple. The electrical corporation shall be authorized to recover any payments made to the county from the ratepayers. Nothing in this article may be interpreted to modify or change the franchise fees, or the surcharges that replaced franchise fees, imposed and collected by municipalities under Division 3 (commencing with Section 6001).

(t) In coordination with the electrical corporation and the local county recorder, the state shall offer to all lease holders or other holders of land use rights, an opportunity to file with the state any leases, authorization, approvals, licenses, or other documented rights to use specific lands not yet used as of the effective date of the transfer of the electrical corporation's lands to the state or a trust pursuant to this article. Those rights shall be continued by the state for the term of the rights as set forth in any documentation. The state shall continue the timeframe for the filings for a period of one year after notification by the state.

399.31. Notwithstanding operational changes necessary to comply with orders of state or federal regulatory agencies, any operational changes of the electrical corporation's hydroelectric facilities that modify reservoir storage levels from historical patterns shall comply with existing state water law regarding injury to downstream legal users of water.

SEC. 13. Section 454.10 is added to the Public Utilities Code, to read:

454.10. (a) In order to assure that the service provided by electrical corporations is adequate, the commission may require each electrical corporation that provides distribution service to make direct investments in electric generation facilities whose output is dedicated to serve the customers connected to its distribution grid.

(b) After a hearing, the commission shall approve rates sufficient to enable the electrical corporation to recover its

reasonable costs of operation, its reasonable investment in the electric generation facilities and a reasonable return on its investment, in accordance with Section 451.

(c) An electrical corporation may meet the obligation described in this section by entering into projects for electric generation facilities jointly with the California Consumer Power and Conservation Financing Authority.

(d) The commission may conduct proceedings, enter orders, and undertake actions it considers necessary or appropriate to carry out the provisions of this section.

(e) This section is declaratory of existing law.

~~SEC. 13.—~~

SEC. 14. Section 454.11 is added to the Public Utilities Code, to read:

454.11. In the case of an electrical corporation serving more than 4,000,000 customers, which is also a gas corporation serving fewer than 5,000 customers, and that has entered into a binding and enforceable agreement pursuant to subdivision (b) of Section 399.21, the commission may not reduce, prior to January 1, 2006, the authorized rate of return on equity of the electrical corporation below the return authorized in the most recent decision or decisions of the commission prior to the effective date of the act adding this section to the Public Utilities Code, or modify the capital structure upon which that rate of return is established. Electricity Market Stabilization Bonds, as defined under Section 399.20, may not be considered indebtedness for the purposes of determining an electrical corporation's authorized capital structure. Neither the electrical corporation's compliance with the requirements of any provision of the act that added this section in the 2001–02 Second Extraordinary Session nor the binding and enforceable agreement entered into by the electrical corporation pursuant to subdivision (b) of Section 399.21, shall be found to constitute noncompliance with the electrical corporation's authorized capital structure.

~~SEC. 14.—~~

SEC. 15. Section 1731 of the Public Utilities Code is amended to read:

1731. (a) The commission shall set an effective date when issuing an order or decision. The commission may set the effective

1 date of an order or decision prior to the date of issuance of the order
2 or decision.

3 (b) After any order or decision has been made by the
4 commission, any party to the action or proceeding, or any
5 stockholder or bondholder or other party pecuniarily interested in
6 the public utility affected, may apply for a rehearing in respect to
7 any matters determined in the action or proceeding and specified
8 in the application for rehearing. The commission may grant and
9 hold a rehearing on those matters, if in its judgment sufficient
10 reason is made to appear. No cause of action arising out of any
11 order or decision of the commission shall accrue in any court to any
12 corporation or person unless the corporation or person has filed an
13 application to the commission for a rehearing within 10 days after
14 the date of issuance or within 10 days after the date of issuance in
15 the case of an order issued pursuant to either Article 5
16 (commencing with Section 816) or Article 6 (commencing with
17 Section 851) of Chapter 4 relating to security transactions and the
18 transfer or encumbrance of utility property, or a financing order
19 issued in connection with qualified costs pursuant to Article 16
20 (commencing with Section 399.20) of Chapter 2.3. For purposes
21 of this article, “date of issuance” means the date when the
22 commission mails the order or decision to the parties to the action
23 or proceeding.

24 (c) No cause of action arising out of any order or decision of the
25 commission construing, applying, or implementing the provisions
26 of Chapter 4 of the Statutes of the 2001-02 First Extraordinary
27 Session shall accrue in any court to any corporation or person
28 unless the corporation or person has filed an application to the
29 commission for a rehearing within in 10 days after the date of
30 issuance of the order or decision. The commission shall issue its
31 decision and order an rehearing within 20 days after the filing of
32 that application.

33 ~~SEC. 15.~~—

34 *SEC. 16.* Section 9601 of the Public Utilities Code is amended
35 to read:

36 9601. (a) Except with respect to supply options of the nature
37 specified in Section 218, with the exception of paragraph (3) of
38 subdivision (b) of that section, as it existed on December 20, 1995,
39 no person, corporation, electrical corporation, or local publicly
40 owned electric utility or other governmental entity other than a

1 retail customer's existing electric service provider as of December
2 20, 1995, shall provide partial or full electric service to a retail
3 customer of a local publicly owned electric utility unless the
4 customer first confirms in writing an obligation to pay, through
5 tariff or otherwise, to the utility currently providing electric
6 service, a nonbypassable generation-related severance fee or
7 transition charge established by the regulatory body for that utility.
8 The severance fee or transition charge shall be paid directly to the
9 local publicly owned utility providing electricity service in the
10 service area in which the consumer is located.

11 (b) Except as provided in subdivision (a) of Section 374, no
12 local publicly owned electric utility or other governmental entity
13 shall provide partial or full electric service to a retail customer of
14 an electrical corporation unless the customer of that electrical
15 corporation first confirms in writing an obligation to pay, through
16 tariff or otherwise, to the electrical corporation currently
17 providing electric service, a nonbypassable generation-related
18 transition charge established by the regulatory body for that
19 electrical corporation, and any electrical corporation debt
20 repayment set-aside established for that electrical corporation for
21 recovery of qualified costs pursuant to Article 16 (commencing
22 with Section 399.20) of Chapter 2.3 of Part 1 of Division 1. The
23 charge shall be paid directly to the electrical corporation providing
24 electricity in the service area in which the consumer is located.

25 (c) No local publicly owned electric utility or electrical
26 corporation shall sell electric power to the retail customers of
27 another local publicly owned electric utility or electrical
28 corporation unless the first utility has agreed to let the second
29 utility make sales of electric power to the retail customers of the
30 first utility.

31 ~~SEC. 16.~~—

32 *SEC. 17.* Section 80002 of the Water Code is amended to read:

33 80002. Nothing in this division may be construed to reduce or
34 modify any electrical corporation's obligation to serve, except to
35 the extent set forth in a definitive agreement implementing the
36 procurement obligations of the department as contemplated by a
37 binding and enforceable agreement, as defined in subdivision (b)
38 of Section 399.21 of the Public Utilities Code. The department
39 may enter into those agreements with an electrical corporation and
40 other parties in furtherance of the foregoing, as it determines to be

1 appropriate. Nothing in this section may be construed to obligate
2 the department for any procurement cost obligations of any
3 electrical corporation that may have existed as of February 1,
4 2001.

5 ~~SEC. 17.~~—

6 *SEC. 18.* Section 80010 of the Water Code is amended to read:

7 80010. As used in this division, unless the context otherwise
8 requires, the following terms have the following meanings:

9 (a) “Bonds” means bonds, notes, or other evidences of
10 indebtedness issued solely for the purposes of paying the cost of
11 electric power and transmission, scheduling, and other related
12 expenses incurred by the department on and after the effective date
13 of this division, or to reimburse expenditures from the fund for
14 those purposes; repaying to the General Fund any advances made
15 to the department from appropriations made to the fund pursuant
16 hereto or hereafter for purposes of this division, any advances
17 made to the department from the Water Resources Electric Power
18 Fund, and General Fund moneys expended by the department
19 pursuant to the Governor’s Emergency Proclamation dated
20 January 17, 2001; establishing or maintaining reserves in
21 connection with the bonds; costs of issuance of bonds or incidental
22 to their payment or security; capitalized interest; or to renew or
23 refund any bonds.

24 (b) “Commission” means the Public Utilities Commission.

25 (c) “Department of Water Resources costs” means all costs
26 incurred by the Department of Water Resources, including, but not
27 limited to, debt service or other costs associated with bonds or
28 notes issued to finance those costs and ongoing costs incurred in
29 the procurement of power under contracts executed by the
30 Department of Water Resources.

31 (d) “Department of Water Resources financing costs” means
32 all costs, including principal and interest, associated with the
33 issuance and repayment of all bonds and notes issued pursuant to
34 this division.

35 (e) “Electrical corporation” has the same meaning as that term
36 is defined in Section 218 of the Public Utilities Code.

37 (f) “Fund” means the Department of Water Resources Electric
38 Power Fund established by Section 80200.

(g) “Local publicly owned electric utility” includes the entities defined in subdivision (d) of Section 9604 of the Public Utilities Code and publicly owned utilities that provide electricity.

(h) “Power” means electric power and energy, including, but not limited to, capacity and output, or any of them.

(i) “Public utility” has the same meaning as that term is defined in Section 216 of the Public Utilities Code.

~~SEC. 18.—~~

SEC. 19. Section 80110 of the Water Code is amended to read:

80110. (a) The department shall retain title to all power sold by it to the retail end use customers. The department shall be entitled to recover, as a revenue requirement, amounts and at the times necessary to enable it to comply with Section 80134, and shall advise the commission as the department determines to be appropriate. Such revenue requirements may also include any advances made to the department hereunder or hereafter for purposes of this division, or from the Department of Water Resources Electric Power Fund, and General Fund moneys expended by the department pursuant to the Governor’s Emergency Proclamation dated January 17, 2001. For purposes of this division and except as otherwise provided in this section, the Public Utility Commission’s authority as set forth in Section 451 of the Public Utilities Code shall apply, except any just and reasonable review under Section 451 shall be conducted and determined by the department. The commission may enter into an agreement with the department with respect to charges under Section 451 for purposes of this division, and that agreement shall have the force and effect of a financing order adopted in accordance with Article 16 (commencing with Section 399.20) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, as determined by the commission. In no case shall the commission increase the electricity charges in effect on the date that the act that adds this section becomes effective for residential customers for existing baseline quantities or usage by those customers of up to 130 percent of existing baseline quantities, until such time as the department has recovered the costs of power it has procured for the electrical corporation’s retail end use customers as provided in this division. The department shall have the same rights with respect to the payment by retail end use customers for power sold by the department as do providers of power to such customers.

(b) Notwithstanding any provision of law, all rates, charges, and fees established by the Public Utilities Commission to recover Department of Water Resources costs pursuant to this section or Section 365.2 of the Public Utilities Code shall be nonbypassable, except to the extent permitted by Sections 365.2 and 365.3 of the Public Utilities Code. The rates, charges, and fees shall be disconnectible to the same extent as rates, charges, and fees payable to an electrical corporation. Notwithstanding any other provision of law, in allocating Department of Water Resources financing costs to customer rates for department power purchased pursuant to this division the commission shall allocate the Department of Water Resources financing costs at a uniform rate per kilowatthour of department-procured electricity consumed to all bundled service customers of an electrical corporation, including all customers that were receiving bundled service from the electrical corporation on or after January 17, 2001. Nothing in this section shall be deemed to affect the continuing validity of any rates, charges, or fees established by the commission and applicable prior to the effective date of the amendment to this section that added this subdivision.

~~SEC. 19.—~~

SEC. 20. Notwithstanding any provision of law, the Director of the Department of Water Resources, acting on behalf of the state, may execute and deliver an agreement consistent with Section 399.21 of the Public Utilities Code with any electrical corporation.

~~SEC. 20.—~~

SEC. 21. If any part of the provisions of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of this act, including the application of such part or provision to other persons or circumstances, shall not be affected thereby, and this act shall otherwise continue in full force and effect and shall otherwise be fully operative. To this end, the provisions of this act, and each of them, are hereby declared to be severable.

~~SEC. 21.—~~

SEC. 22. It is the intent of the Legislature to accomplish all of the following:

(a) Hold harmless local agencies that would receive revenues prior to its acquisition by the state from local property taxation,

1 pursuant to Sections 100 and 100.01 of the Revenue and Taxation
2 Code, of a transmission facility that constitutes real property and
3 that is acquired by the state department or agency from an
4 electrical corporation.

5 (b) Decrease the revenue transfer pursuant to Section 97.3 of
6 the Revenue and Taxation Code in amounts equal to the property
7 taxes those local agencies would have received pursuant to
8 Sections 100 and Sections 100.01 of the Revenue and Taxation
9 Code absent the transfer of ownership to the state.

10 (c) Make reductions for the local agency, as defined by
11 subdivision (a) of Section 95 of the Revenue and Taxation Code,
12 in which the transmission facility is located in amounts not greater
13 than the property tax revenues that would have been received by
14 the local agency if the property had continued to be owned by the
15 electrical corporation.

16 ~~SEC. 22.~~

17 *SEC. 23.* No reimbursement is required by this act pursuant
18 to Section 6 of Article XIII B of the California Constitution
19 because the only costs that may be incurred by a local agency or
20 school district will be incurred because this act creates a new crime
21 or infraction, eliminates a crime or infraction, or changes the
22 penalty for a crime or infraction, within the meaning of Section
23 17556 of the Government Code, or changes the definition of a
24 crime within the meaning of Section 6 of Article XIII B of the
25 California Constitution.

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